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The Coalition Provisional Authority (CPA): Origin, Characteristics, and Institutional Authorities

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Summary

Responsibility for overseeing reconstruction in post-conflict Iraq initially fell to the Office of Reconstruction and Humanitarian Assistance (ORHA). Established in early 2003, ORHA was headed by Lieutenant General Jay M. Garner, U.S. Army (ret.). By June 2003, ORHA had been replaced, or subsumed, by the Coalition Provisional Authority (CPA), which is led by Ambassador L. Paul Bremer III.

It is unclear whether CPA is a federal agency. Competing, though not necessarily mutually exclusive, explanations for how it was established contribute to the uncertainty about its status. The lack of an authoritative and unambiguous statement about how this organization was established, by whom, and under what authority leaves open many questions, particularly in the areas of oversight and accountability. Some executive branch documents support the notion that it was created by the President, possibly as the result of a National Security Presidential Directive (NSPD). (This document, if it exists, has not been made available to the public.) The other possibility is that the authority was created by, or pursuant to, United Nations Security Council Resolution 1483 (2003).

Given that its organizational status is uncertain, an examination of selected features of CPA might be instructive in assessing what type of organization it is. The authority is closely aligned with the Department of Defense (DOD): the Under Secretary of Defense has designated the Secretary of the Army as executive agent for CPA. Other significant features of the authority include its Office of Inspector General (OIG), which is expected to work closely with the DOD and U.S. Agency for International Development (USAID) Offices of Inspector General; the extent of its procurement activities; its regulatory authority; and its Program Review Board. CPA already has been the subject of several protests related to contracts it awarded, and, although the resolution of these protests has not shed any light on CPA's status, this area of procurement can be instructive. An undated organization chart provides some insight into the structure of the authority, although it does not include some key offices and positions, such as the Deputy Administrator, the OIG, and the legislative affairs staff. Provisions in several statutes include reporting requirements that bear directly or indirectly on CPA. These include Sections 2202(b), 2203, 2207, and 3001 of P.L. 108-106 (117 Stat. 1209), and Section 1203 of P.L. 108-136 (117 Stat. 1392).

S. 2127, the Stabilization and Reconstruction Civilian Management Act of 2004, is pending in the 108th Congress. If enacted, it would establish an Office of International Stabilization and Reconstruction within the Department of State, which would be responsible for, among other things, monitoring unstable situations around the world, planning for reconstruction crises, and coordinating with relevant executive agencies to develop interagency contingency plans. This report will be updated as events warrant.

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The Coalition Provisional Authority (CPA): Origin, Characteristics, and Institutional Authorities

Introduction

The Coalition Provisional Authority (CPA or “the authority”) was established approximately one month after United States and coalition forces took control of Baghdad in Iraq on April 9, 2003.¹ The authority’s mission is “to restore conditions of security and stability, to create conditions in which the Iraqi people can freely determine their own political future, (including by advancing efforts to restore and establish national and local institutions for representative governance) and facilitating economic recovery, sustainable reconstruction and development.”² Information provided on the CPA website indicates that “[t]he Governing Council and the Coalition Provisional Authority will be dissolved” by June 30, 2004, and that “[t]his will end the responsibilities of the Coalition as an occupying power as specified in the United Nations resolutions.”³

After examining the origin of CPA, this report discusses two views on how the authority was established, reviews selected characteristics of the authority, identifies statutory reporting requirements concerning the authority and the reconstruction of Iraq, and explores several policy issues.

The Office of Reconstruction and Humanitarian Assistance and the Coalition Provisional Authority

Responsibility for providing humanitarian assistance and aiding in the reconstruction of postwar Iraq initially fell to the Office of Reconstruction and Humanitarian Assistance (ORHA). Reportedly, the ORHA was established by, or pursuant to, National Security Presidential Directive (NSPD) 24, which was issued

¹ CRS Report RL32105, *Post-War Iraq: A Table and Chronology of Foreign Contributions*, by Jeremy M. Sharp, Melanie Caesar, and Adam Frost, p. 10.

² U.S. Office of Management and Budget, *Report to Congress Pursuant to Section 1506 of the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108-11)*, June 2, 2003, p. 2.

³ Coalition Provisional Authority and Iraqi Governing Council, *The November 15 Agreement: Timeline to a Sovereign, Democratic and Secure Iraq*, available at [<http://iraqcoalition.org/government/AgreementNov15.pdf>], visited Feb. 25, 2004.

in January 2003.⁴ NPSD 24 has not been released to the public. A news article stated that ORHA was tied to the Pentagon and that, while the U.S. Agency for International Development (USAID) would handle much of the humanitarian and reconstruction work, ORHA would control the funding.⁵ As early as February 12, it was reported that Lieutenant General Jay M. Garner, U.S. Army (ret.), had been selected to serve as the coordinator for humanitarian and reconstruction assistance, and that he would report to General Tommy R. Franks, then-commander of U.S. Central Command.⁶

As late as mid-April, it appeared that Lieutenant General Garner was still in charge of the ORHA.⁷ However, a news report dated May 2 stated that President George W. Bush planned to name Ambassador L. Paul Bremer III as special envoy and civil administrator of Iraq, and that Lieutenant General Garner would report to Ambassador Bremer.⁸ On May 6, 2003, President Bush announced that he had appointed Ambassador Bremer as Presidential Envoy and that he would serve as the senior leader of the coalition. (Unlike his appointment as an ambassador earlier in his career, Senate confirmation was neither required nor sought.) The White House press release also stated:

In his capacity as Presidential Envoy, he will oversee Coalition reconstruction efforts and the process by which the Iraqi people build the institutions and governing structures that will guide their future.... Ambassador Bremer will report to Secretary of Defense Rumsfeld and will advise the President, through the Secretary, on policies designed to achieve American and Coalition goals for Iraq.⁹

No mention was made of Lieutenant General Garner or ORHA in the press release.

⁴ Karen DeYoung and Dan Morgan, "U.S. Plan for Iraq's Future is Challenged; Pentagon Control, Secrecy Questioned," *Washington Post*, Apr. 6, 2003, p. A21; Jim Hoagland, "War's Opening Hours," *Washington Post*, Feb. 2, 2003, p. B7.

⁵ DeYoung and Morgan, "U.S. Plan for Iraq's Future is Challenged; Pentagon Control, Secrecy Questioned," p. A21.

⁶ Peter Slevin, "U.S. Military Lays Out Postwar Iraq Plan; Officials Brief Congress on Rebuilding Battered Economy, Reshaping Society," *Washington Post*, Feb. 12, 2003, p. A21.

⁷ Peter Baker, "U.S. Forces Will Redeploy into 3 Zones; Marines to Occupy Southern Iraq as Army Takes over North; General Will Oversee Capital," *Washington Post*, Apr. 15, 2003, p. A31.

⁸ Mike Allen, "Expert on Terrorism to Direct Rebuilding," *Washington Post*, May 2, 2003, p. A1.

⁹ White House, Office of the Press Secretary, "President Names Envoy to Iraq," May 6, 2003, available at [<http://www.whitehouse.gov/news/releases/2003/05/20030506-5.html>], visited Feb. 2, 2004.

On May 11, 2003, the *Washington Post* reported the existence of the Coalition Provisional Authority.¹⁰ On May 13, 2003, the Secretary of Defense designated Ambassador Bremer as CPA Administrator.¹¹ The first regulation issued by Ambassador Bremer, dated May 16, 2003, identified him as Administrator of CPA. Apparently, no official announcement was made that ORHA had been replaced, or subsumed, by CPA. The authority's Inspector General stated, in his initial report to Congress, that OHRA became CPA in May 2003.¹² By June 18, Lieutenant General Garner no longer was the head of ORHA. A Department of Defense (DOD) news transcript dated June 18 identified him as the former director of ORHA, and indicated he had returned to the United States a couple of weeks earlier.¹³

Key CPA Personnel

Ambassador Bremer's deputy is Richard Henry Jones, who is also the U.S. Ambassador to Kuwait. Ambassador Jones, who is on extended temporary duty (TDY) in Iraq, was assigned to the CPA position sometime in November 2003.¹⁴

Sir Jeremy Greenstock, the United Kingdom's Special Representative in Iraq, is referred to, in some news articles and documents, as a deputy to the CPA Administrator, or is identified as effectively serving as a deputy to Ambassador Bremer.¹⁵ A news bulletin produced by the U.S. Permanent Mission to the United Nations Office and Other International Organizations in Geneva identified Sir Jeremy as the CPA deputy.¹⁶ Sir Jeremy's appointment as the United Kingdom's Special

¹⁰ Peter Slevin, "Reject Baath Party, U.S. Tells Iraqi Job Hopefuls," *Washington Post*, May 11, 2003, p. A22.

¹¹ Coalition Provisional Authority, Office of Inspector General, *Message from the Inspector General of the Coalition Provisional Authority*, report, Mar. 30, 2004, p. 5, available at [<http://www.cpa-ig.org/reports.html>], visited Mar. 31, 2004.

¹² *Ibid.*

¹³ U.S. Department of Defense, "Secretary Rumsfeld Media Availability with Jay Garner," news transcript, June 18, 2003, available at [<http://www.defenselink.mil/transcripts/archive.html>], visited Jan. 30, 2004.

¹⁴ Information provided by telephone by the Department of State country office for Kuwait and Bahrain to the author on Mar. 1, 2004.

¹⁵ Ewen MacAskill, "Iraq after the War: Blair Envoy Warns Iran on Meddling," *Guardian*, Oct. 23, 2003, p. 4; Philip Stephens, "Now Bush Can Make a Fresh Start," *Financial Times*, Dec. 16, 2003, p. 23; Owen Bowcott and Brian Whitaker, "Trouble Looms after Coalition Tells Kurds Self Rule Can Stay," *Guardian*, Jan. 6, 2004, p. 17; Anton La Guardia, "U.S. General Will Lead Iraqi Army," *Daily Telegraph*, Mar. 11, 2004, p. 12; Patrick Cockburn, "Bremer Tries to Salvage Appointed-Government Plan Amid Shia Opposition," *Independent*, Jan. 17, 2004, p. 13.

¹⁶ Judy Aita, "Negroponte Praises Selection of Brahimi to Head Mission," *Daily Bulletin*, Feb. 10, 2004, p. 1, available at [<http://www.usmission.ch/DailyBulletin/2004/February/0210DB.pdf>], visited Mar. 19, 2004. This article also is posted on the CPA website at [http://www.cpa-iraq.org/pressreleases/20040210_UN_back.html], visited Mar. 19, 2004.

Representative was announced June 16, 2003, by the Prime Minister's official spokesman (PMOS). He replaced John Sawers.¹⁷

Other senior CPA officials include Rear Admiral David J. Nash, U.S. Navy (ret.), who is director of the Program Management Office (PMO), which has responsibility for monitoring contracts funded by the Emergency Supplemental Appropriations Act for Defense and the Reconstruction of Iraq and Afghanistan for FY2004 (FY2004 emergency supplemental).¹⁸ Rear Admiral Nash began his duties in July 2003. Major General Ronald L. Johnson, U.S. Army, is the U.S. Deputy to the PMO, and also serves as the commander of the Gulf Region Division of the Army Corps of Engineers. As of February 2004, Lawrence Crandall is the U.S. Agency for International Development (USAID) Deputy to the PMO.¹⁹ On January 20, 2004, Stuart W. Bowen Jr. was appointed as Inspector General by the Secretary of Defense.²⁰ Rear Admiral Larry L. Poe, U.S. Navy (ret.) is the Deputy Inspector General.²¹

Establishment of CPA

Detailed information that explicitly and clearly identifies how the authority was established, and by whom, is not readily available. Instead, there are two alternative explanations for how it was established: one version suggests that the President established CPA; the other suggests that it was established pursuant to a United Nations (U.N.) Security Council resolution. While these possibilities are not mutually exclusive, the lack of a clear, authoritative, and unambiguous statement about how this organization was established and its status (that is, is it a federal agency or not) leaves open many questions, particularly regarding the area of oversight and accountability.

¹⁷ Prime Minister's Office, "Press Briefing: 11AM Monday 16 June 2003," available at [<http://www.number-10.gov.uk/output/Page3924.asp>], visited Mar. 19, 2004.

¹⁸ P.L. 108-106; 117 Stat. 1209.

¹⁹ Coalition Provisional Authority Iraq Program Management Office, "About PMO," available at [<http://www.rebuilding-iraq.net>], visited Mar. 1, 2004.

²⁰ Coalition Provisional Authority, Office of Inspector General, *Message from the Inspector General of the Coalition Provisional Authority*, p. 5. Bowen had previously served in the Bush Administration as a Deputy Assistant to the President and Deputy Staff Secretary at the White House. (Patton Boggs LLP, "White House Deputy Assistant to the President Stuart W. Bowen, Jr., Joins Patton Boggs LLP," news release, Mar. 3, 2003, available at [http://www.pattonboggs.com/News/releases/2003_03_03_Bowen_joins.htm], visited Mar. 19, 2004.)

²¹ Coalition Provisional Authority, Office of Inspector General, "Biographies," available at [<http://www.cpa-ig.org/bio.html>], visited Apr. 19, 2004.

National Security Presidential Directive

It has been suggested that CPA was established by an NSPD issued in May 2003.²² It is possible to infer, from the following excerpt from a report to Congress provided by the Office of Management and Budget (OMB), on behalf of the President, that the President may have played a role in creating the authority.²³ Of particular interest are the statements that the CPA Administrator oversees all non-military federal government programs and activities in Iraq, and that the President vested the authority with executive, legislative, and judicial authority.

The Administrator of the Coalition Provisional Authority (CPA) reports to the President through the Secretary of Defense. He oversees, directs and coordinates all U.S. Government (USG) programs and activities in Iraq, except those under the command of the Commander, U.S. Central Command (CENTCOM).

The CPA exercises powers of government temporarily in order to provide for the effective administration of Iraq, to restore conditions of security and stability, to create conditions in which the Iraqi people can freely determine their own political future, ... and facilitating economic recovery, sustainable reconstruction and development.

The CPA is vested by the President with all executive, legislative and judicial authority necessary to achieve its objectives, exercised consistent with relevant U.N. Security Council resolutions, including [U.N. Security Council] Resolution 1483,²⁴ and the laws and usages of war. The CPA Administrator has primary responsibility for exercising this authority.²⁵

The clearest statement that the U.S. government played a part in establishing the authority is found in a letter submitted to the President of the United Nations Security Council by the Permanent Representatives of the United States and the United Kingdom. Dated two days after Ambassador Bremer was appointed by President Bush as the Presidential Envoy to Iraq, the letter stated, in part:

²² Information provided by telephone by the Coalition Provisional Authority CONUS Support Office to the author on Sept. 15, 2003. (CONUS is an acronym for “continental United States.”)

²³ The report responds to a requirement in Section 1506 of the Emergency Wartime Supplemental Appropriations Act, 2003 (P.L. 108-11; H.R. 1559).

²⁴ U.N. Security Council Resolution 1483, which was adopted by the United Nations Security Council on May 22, 2003, “lifted civilian sanctions and provided for termination of the Oil-for-Food Programme within six months, transferring responsibility for the administration of any remaining activity to the Authority representing the occupying powers.” (United Nations, Office of the Iraq Programme Oil-for-Food, available at [<http://www.un.org/Depts/oip/background/scrsindex.html>], visited Sept. 13, 2003. U.N. Security Council Resolution 1483 is available at this website.)

²⁵ U.S. Office of Management and Budget, “Report to Congress Pursuant to Section 1506 of the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108-11),” June 2, 2003 (letter), available at [<http://www.whitehouse.gov/omb/legislative>], visited Mar. 12, 2004.

In order to meet these objectives and obligations [disarming Iraq and providing for the humanitarian needs of Iraqis] in the post-conflict period in Iraq, the United States, the United Kingdom and Coalition partners, acting under existing command and control arrangements through the Commander of Coalition Forces, have created the Coalition Provisional Authority, which includes the Office of Reconstruction and Humanitarian Assistance, to exercise powers of government temporarily, and, as necessary, especially to provide security, to allow the delivery of humanitarian aid, and to eliminate weapons of mass destruction.²⁶

While this excerpt can be viewed as an acknowledgment that the United States (and the United Kingdom) established CPA, it does not explain how the authority was established, nor does it resolve the question of its organizational agency status.

Government documents supporting the notion that CPA is a federal entity (which suggests, in turn, that it was created by the President) include two presidential memoranda. A May 6, 2003, memorandum, as amended by a December 5, 2003, memorandum, stated, in part:²⁷

In accordance with Presidential direction relating to Iraq relief and reconstruction, multiple agencies are deployed with the Coalition Provisional Authority (CPA) and are serving as implementing partners or executing agents for programs and projects. These agencies will identify funding requirements for such programs and projects through CPA. OMB will work with CPA to transfer funds to the appropriate implementing agency.²⁸

The authority's intimate involvement in the funding process for work done by federal government agencies in Iraq further suggests that the CPA is a federal entity.

Language in the FY2004 emergency supplemental also states that the CPA is part of the federal government. In describing how the apportionment of \$18.649 billion is to be carried out, P.L. 108-106 states:

Funds appropriated under this heading [Iraq Relief and Reconstruction Fund] shall be apportioned only to the Coalition Provisional Authority in Iraq (in its

²⁶ Sir Jeremy Greenstock, Permanent Representative of the United Kingdom, and John D. Negroponte, Permanent Representative of the United States, letter to the President of the Security Council, May 8, 2003, available at [<http://www.globalpolicy.org/security/issues/iraq/document/2003/0608usukletter.htm>], visited Mar. 9, 2004.

²⁷ The Dec. 5, 2003, memorandum directed that any references in the May 6, 2003, memorandum to the Office of Reconstruction and Humanitarian Assistance or ORHA be replaced by "Coalition Provisional Authority" and "CPA," respectively.

²⁸ U.S. President (G. W. Bush), "Memorandum on Delegation of the Functions of the President under the Heading 'Iraq Relief and Reconstruction Fund' in the Emergency Wartime Supplemental Appropriations Act, 2003," *Federal Register*, May 9, 2003, vol. 68, no. 90, p. 25275; U.S. President (G. W. Bush), "Transfer of Funds Appropriated to the President under the heading Operating Expenses of the Coalition Provisional Authority, and Delegation of the Functions of the President under the heading Iraq Relief and Reconstruction Fund, in the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004," *Federal Register*, Jan. 9, 2004, vol. 69, no. 6, p. 1645.

capacity as an entity of the United States Government), the Department of State, the Department of Health and Human Services, the Department of Treasury, the Department of Defense, and the United States Agency for International Development ...²⁹

According to this excerpt, the authority is an entity of the federal government. Nonetheless, questions remain regarding how CPA was established, who established it, the precise nature of its relationship to DOD (including DOD components) and other federal entities, and whether CPA is a federal agency or some other type of government organization. Another unanswered question concerns the scope of CPA's authority when functioning in its capacity as an entity of the U.S. government.

Information provided by CPA itself indicates that its sector program management offices (SPMOs) are part of the federal government. (The CPA's PMO is supported by six SPMOs.) In a written response to a question asked at a January 21, 2004, pre-proposal conference on contracting opportunities, the CPA stated that "the Sector Program Management Office (SPMO) is a Government entity."³⁰

United Nations Security Council Resolution 1483

A second possibility is that United Nations Security Council Resolution 1483 (2003) was instrumental in creating the authority, a view supported by several documents released by the executive branch. A solicitation issued by the Pentagon Renovation Office, on behalf of CPA, for procuring PMO support services, stated in the "overview": "The CPA was enacted by the United Nations Security Council under Resolution 1483 (2003)."³¹ Other government documents, including the President's proposed budget for FY2005 and P.L. 108-106, stated that the authority was established pursuant to Resolution 1483.³² This statement does not necessarily contradict the language found elsewhere in the FY2004 emergency supplemental stating that CPA is an entity of the U.S. government, for the reason discussed above.

Nevertheless, repeated references to Resolution 1483 might be viewed by some as implying that the resolution alone authorized or established a coalition-based organization in Iraq, or might contribute to confusion about the organizational status of the authority. Relevant portions of the resolution are as follows:

The Security Council, ... Noting the letter of 8 May 2003 from the Permanent Representatives of the United States of America and the United Kingdom of Great Britain and Northern Ireland to the President of the Security Council

²⁹ 117 Stat. 1225.

³⁰ Coalition Provisional Authority, "List of Questions and Answers Compiled from a Pre-Proposal Conference Held on Jan. 21, 2004," p. 20, available at [http://rebuilding-iraq.net/pdf/qa_28_jan_04_consolidated_final.pdf], visited Mar. 1, 2004.

³¹ Pentagon Renovation Office, solicitation W914NS-04-R-0001, Jan. 6, 2004, p. 2, available at [<http://renovation.pentagon.mil/IIRO/IIRO.htm>], "Solicitations Documents," visited Feb. 3, 2004.

³² U.S. Office of Management and Budget, *Budget of the United States Government — FY2005, Appendix* (Washington: GPO, 2004), pp. 958-959; P.L. 108-106; 117 Stat. 1226.

(S/2003/538) and recognizing the specific authorities, responsibilities, and obligations under applicable international law of these states as occupying powers under unified command (the “Authority”), ... *Calls upon* the Authority, consistent with the Charter of the United Nations and other relevant international law, to promote the welfare of the Iraqi people through the effective administration of the territory, including in particular working towards the restoration of conditions of security and stability and the creation of conditions in which the Iraqi people can freely determine their own future.³³

While recognizing the responsibility to be borne by the United States and the United Kingdom in restoring security and stability in Iraq, this resolution does not establish, or authorize the creation of, a specific organization to carry out this responsibility. In the words of a former Administrator of the Office of Federal Procurement Policy, the resolution “noted and recognized, but did not establish CPA.”³⁴

Lending support to the notion that the authority is not a federal agency, but instead is an amorphous international organization, are statements by the Department of the Army. In 2003, two protests were filed with the General Accounting Office (GAO) by Turkcell Consortium, which challenged CPA’s issuance of licenses for mobile telecommunications services in Iraq. GAO dismissed both protests without having to rule on the status of CPA.

In a letter submitted to GAO during the protest process, the U.S. Army Legal Services Agency was unequivocal in its argument that CPA is not a federal agency:

The CPA is not a Federal agency. Rather, as the HCA [CPA’s Head of Contracting Activity] explains: The Coalition Provisional Authority (CPA) is a multi-national coalition that exercises powers of government temporarily in order to provide for the effective administration of Iraq during the period of transitional administration, to restore conditions of security and stability, to create conditions in which the Iraqi people can freely determine their own political future, including by advancing efforts to restore and establish national and local institutions for representative governance and facilitating economic recovery and sustainable reconstruction and development. CPA is vested with all executive, legislative and judicial authority necessary to achieve its objectives, to be exercised under relevant U.N. Security Council resolutions, including Resolution 1483 (2003), and the laws and usages of war. This authority is exercised by the CPA Administrator.

The GAO does not have jurisdiction over this protest because CPA is not a Federal agency.... The CPA is an organization comprised of members from a coalition of countries.... CPA is analogous to an organization such as NATO’s [North Atlantic Treaty Organization’s] Stabilization Force (SFOR) in Bosnia and Croatia. The SFOR has its own contracting organization, the Theatre Allied Contracting Office (TACO), which may utilize the services of United States

³³ United Nations Security Council, *Resolution 1483 (2003)*, S/RES/1483(2003), May 22, 2003, available at [http://www.un.org/Docs/sc/unsc_resolutions.html], visited Jan. 30, 2004, p. 2 (italics in original).

³⁴ Angela B. Styles, “Seller Beware: Assessing the Risks of Iraq Reconstruction Contracting,” *Federal Contracts Report*, Jan. 20, 2004, vol. 81, no. 2, p.65.

military personnel. Like the TACO, CPA is not a federal agency. Like NATO and SFOR, CPA is composed of an international coalition.... UN Security Council Resolution 1483 (2003) recognizes CPA as “the Authority” to govern Iraq and grants the CPA discretion to disburse funds in the Development Fund for Iraq (“DFI”).³⁵

While the CPA does employ individuals from coalition countries, there are at least two significant differences between CPA and SFOR. The SFOR is overseen by a multinational organization, the North Atlantic Treaty Organization (NATO), and it was authorized by United Nations Security Council Resolution 1088 (1996).³⁶ The Security Council’s resolution explicitly authorized the establishment of SFOR (as it also did for the precursor entity, the Implementation Force (IFOR)):

The Security Council ... authorizes the Member States ... to establish for a planned period of 18 months a multinational stabilization force (SFOR) as the legal successor to IFOR under unified command and control³⁷

Given that P.L. 108-106 and other government documents state that CPA is a U.S. government entity, the Army’s response raises questions. Arguably, the Army was concerned that some would assume, precisely because of references to the authority as a government entity, that CPA is a federal agency. Another possibility is that the Army, as the executive agent for the authority (discussed below), has assumed responsibility for certain procurement activities and tasks, such as responding to protests, and thus argued strongly for excluding CPA from the GAO protest process.

Legislative language might contribute to questions about the status of the authority. The FY2004 emergency supplemental refers to CPA as “an entity of the United States Government.”³⁸ In the National Defense Authorization Act for FY2004, Section 1203(b)(1) mentions “civilian groups reporting to the Secretary [of Defense], including” ORHA and CPA.³⁹ Section 1203(b)(3) refers to the “relationship of Department of Defense entities, including” ORHA and CPA.⁴⁰ The House report accompanying H.R. 1588 (P.L. 108-136), the National Defense Authorization Act for FY2004, in its comments on the section that became Section 1203, mentioned “Department of Defense (DOD) civilian and military activities in

³⁵ Maj. Frank A. March, Department of the Army, United States Army Legal Services Agency, “Protest of Turkcell Consortium, B-293048,” correspondence to U.S. General Accounting Office, Oct. 21, 2003, pp. 2- 4.

³⁶ North Atlantic Treaty Organization, “History of NATO-led Stabilisation Force (SFOR) in Bosnia and Herzegovina,” no date, available at [<http://www.nato.int/sfor/docu/d981116a.htm>], visited Feb. 4, 2004.

³⁷ United Nations Security Council, Resolution 1088 (1996), Dec. 12, 1996, S/RES/1088, available at [<http://www.nato.int/ifor/un/u961212b.htm>], visited Feb. 4, 2004.

³⁸ 117 Stat. 1225.

³⁹ P.L. 108-136; 117 Stat. 1392 at 1648; H.R. 1588.

⁴⁰ Sec. 1203(b)(1)-(3) of P.L. 108-136.

post-conflict Iraq.”⁴¹ Eschewing the word “agency” in favor of “entity,” “group,” and “activities” in legislation and congressional documents could be a reflection of the Administration’s approach, an acknowledgment that CPA’s status is uncertain, or a sign that Congress agrees that CPA is not an agency.

Documents produced by the Administration and the CPA do not state precisely how this organization was established. In the preface to the first regulation of the CPA, dated May 16, 2003, Ambassador Bremer stated: “*Pursuant to my authority as Administrator of the Coalition Provisional Authority (CAP), relevant U.N. Security Council resolutions, including Resolution 1483 (2003), and the laws and usages of war ...*”⁴² In a December 2003 memorandum on contracting procedures for the reconstruction of Iraq, Deputy Secretary of Defense Paul Wolfowitz wrote: “The Coalition Provisional Authority (CPA) has been established to promote the welfare of the Iraqi people.”⁴³ Neither statement identifies by whom, or under what authority, CPA was established.

Selected Characteristics of CPA

The asserted lack of clarity concerning authorizing authority and establishment of the CPA arguably extends to its status within the executive branch. It is not clear whether the authority is a federal agency, or can be treated as such. What is known is that the CPA is neither an executive department nor a government corporation. Executive departments are identified by statute, and government corporations are “corporation[s] owned or controlled by the Government of the United States.”⁴⁴ If the authority is a federal government entity, it may be an independent establishment, which is defined as “an establishment in the executive branch (other than the United States Postal Service or the Postal Rate commission) which is not an Executive department, military department, Government corporation, or part thereof, or part of an independent establishment.”⁴⁵ If it is determined that the authority is an independent establishment, it also would be considered an executive agency.⁴⁶ Other possibilities are that CPA is a component of DOD, or that it is not a federal government entity. Due to its unusual status, this examination of certain of its characteristics or features might be instructive.

⁴¹ U.S. Congress, House Committee on Armed Services, *National Defense Authorization Act for Fiscal Year 2004*, H.Rept. 108-106, 108th Cong, 1st sess., May 16, 2003 (Washington: GPO, 2003), p. 359.

⁴² Coalition Provisional Authority, “Coalition Provisional Authority Regulation Number 1,” May 16, 2003, available at [<http://www.iraqcoalition.org/regulations/index.html>], visited Feb. 25, 2004. (italics in original)

⁴³ Paul Wolfowitz, Deputy Secretary of Defense, “Determination and Findings,” Dec. 5, 2003, p. 1, available at [http://www.rebuilding-iraq.net/pdf/D_F.pdf], visited Feb. 11, 2004.

⁴⁴ 5 U.S.C. §§ 101 and 103.

⁴⁵ 5 U.S.C. § 104(1).

⁴⁶ An “‘executive agency’ means an Executive department, a Government corporation, and an independent establishment.” (5 U.S.C. § 105).

CPA's Relationship to the Department of Defense

While it is clear that, ultimately, the CPA Administrator answers to the President, it is also clear that the Administrator reports to the Secretary of Defense as well.⁴⁷ Administratively, Ambassador Bremer and the authority fall under the Department of the Army. For Ambassador Bremer, this means that his salary, Executive Level III, is paid by the Army.⁴⁸ A report prepared by the Office of Personnel Management (OPM), dated March 10, 2004, shows that 558 federal government employees are detailed to CPA. The largest contingents are from the Department of Defense (455) and the Department of State (85). Other agencies contributing personnel include the Department of Transportation (2), the Department of the Treasury (6), the Naval Criminal Investigative Service (1), OPM (1), the U.S. Navy (2), and unknown (6). Three detailees are ambassadors, 65 are from the Foreign Service, 411 are identified as "federal civilian workers," and the remaining 79 are members of the Senior Executive Service (SES).⁴⁹ (CPA also employs individuals from coalition partner countries.⁵⁰) A document available on the Army Civilian Personnel On-Line (CPOL) website indicates that all CPA civilian employees were realigned in 2003 to Army rolls.⁵¹

In 2003, the Secretary of the Army was designated the executive agent for ORHA, and, subsequently, CPA, in memoranda issued by the Deputy Secretary of Defense.⁵² Neither memorandum is publicly available, but a third memorandum, issued by the Deputy Secretary of Defense and dated January 14, 2004, addressed acquisition and program support for the authority and confirmed the existence of the previous memoranda:

Pursuant to Section 113 of Title 10, United States Code, the Secretary of the Army is hereby assigned the authority and responsibility for the provision of

⁴⁷ White House, Office of the Press Secretary, "President Names Envoy to Iraq,"; U.S. Office of Management and Budget, *Report to Congress Pursuant to Section 1506 of the Emergency Wartime Supplemental Appropriations Act, 2003 (Public Law 108-11)*.

⁴⁸ Information provided by telephone by the DOD Office of Legislation Liaison to the author on Feb. 5, 2004.

⁴⁹ Letter from Kay Coles James, Director, Office of Personnel Management, to Hon. C. W. Bill Young, Chairman, House Committee on Appropriations, Mar. 10, 2004. Section 599C of P.L. 108-199 requires the OPM to submit a report to the House and Senate Committees on Appropriations on the number of employees, by agency, that are detailed to CPA. The initial report was due February 1, 2004, and quarterly updates are also required.

⁵⁰ Information provided electronically by CPA's legislative affairs office to the author on Apr. 21, 2004.

⁵¹ Army Civilian Personnel On-Line, "FY03: The Year in Review," no date, available at [<http://cpol.army.mil/library/civplans/03eval/pdfs/03yearrev.pdf>], visited Mar. 4, 2004.

⁵² "Army Assigned Responsibility for Acquisition and Program Management Support for CPA," *Federal Contracts Report*, Jan. 27, 2004, vol. 81, no. 3, p. 80. This article stated that the memorandum dated May 21, 2003, designated the Secretary of the Army Executive Agent for the Office of Reconstruction and Humanitarian Assistance and that the memorandum dated June 21, 2003, did the same for the CPA.

acquisition and program management support to the CPA (Iraq and Washington, DC) and any successor entity. The Secretary of Defense shall determine and prioritize the requirements to be supported pursuant to this assignment of responsibility, as necessary.

For purposes of this memorandum, acquisition support is intended to include the award, administration and oversight of all contracts, grants, and other acquisition actions in direct support of the CPA and any successor entity. Program management support comprises all aspects of project oversight, including planning, scheduling and execution, as may be required by the scope of work, directed timelines, and applicable financial management regulations.

All addressees [listed on the memorandum] shall provide support to the Secretary of the Army, as the Secretary of the Army considers necessary, to carry out this assignment of responsibility. Services and supplies provided to the CPA in furtherance of this memorandum shall be made available in accordance with DoD Instruction 4000.19 and applicable financial management regulations. My memoranda of May 21, 2003, designating the Secretary of the Army as Executive Agent for the Office of Reconstruction and Humanitarian Assistance, and June 16, 2003, providing for the exercise of that responsibility in support of the CPA, are modified accordingly.⁵³

The following description of a DOD executive agent indicates that executive agents are assigned responsibility for DOD missions, activities, or tasks:

The Head of a DoD Component to whom the Secretary of Defense or the Deputy Secretary of Defense has assigned specific responsibilities, functions, and authorities to provide defined levels of support for operational missions, or administrative or other designated activities that involve two or more of the DoD Components. The nature and scope of the DoD Executive Agents responsibilities, functions, and authorities shall ... be prescribed at the time of assignment [and] ... remain in effect until the Secretary of Defense or the Deputy Secretary of Defense revokes or suspends them.⁵⁴

This definition would arguably cast CPA as a DOD component. A broad interpretation, though, might allow the Secretary, or Deputy Secretary, to appoint an executive agent for a non-DOD entity or even a non-governmental entity. DOD's policy governing the use of executive agents leaves open this possibility.

4.1. The DoD Executive Agent designation shall be conferred when: 4.1.1. No existing means to accomplish DoD objectives exists. 4.1.2. DoD resources need to be focused on a specific area or areas of responsibility in order to minimize

⁵³ Paul Wolfowitz, Deputy Secretary for Defense, "Assignment of Responsibility for Acquisition and Program Management Support for the Coalition Provisional Authority," memorandum, Jan. 14, 2004, available at [<http://www.acq.osd.mil/sadbu/news/iraq.htm>], visited Feb. 23, 2004.

⁵⁴ Department of Defense Directive 5101.1, *DoD Executive Agent*, Sept. 3, 2002 (certified current as of Nov. 21, 2003), p. 2, available at [<http://www.dtic.mil/whs/directives>], visited Mar. 12, 2004.

duplication or redundancy, or 4.1.3. Such designation is required by law, Executive order, or Government-wide regulation.⁵⁵

Aside from the question of whether an executive agent can be assigned to a non-DOD or non-governmental entity, it appears that item 4.1.1, item 4.1.2, or both might apply to the circumstances surrounding DOD and CPA. It seems likely that item 4.1.3 does not apply, because no law, executive order, or government regulation has been enacted, issued, or produced that requires or authorizes the Army to serve as executive agent. No mention is made in the Deputy Secretary's January 14, 2003, memorandum of which rationale applies to the authority.

Deputy Secretary of Defense Wolfowitz did note that Department of Defense Instruction Number 4000.19 applies to the provision of supplies and services to the CPA. This document provides guidance for intragovernmental and interservice support, which are defined as follows:

Intragovernmental support is support provided by a DoD activity to a non-DoD Federal activity and vice versa — [it] does not include support provided to or received from foreign governments.

Interservice support is support provided by one DoD activity to a DoD activity of another Military Service, Defense Agency, Unified Combatant Command, Army Reserves, Navy Reserves, Air Force Reserves, Marine Corps Reserves, Air National Guard, or Field Activity.⁵⁶

Deputy Secretary Wolfowitz's memorandum did not indicate whether the authority receives support from the Army under an interservice or an intragovernmental agreement, which leaves unanswered the question of whether CPA is part of DOD, or simply attached to it for the purposes of facilitating coordination with, and receiving support from, the Department of the Army. Nevertheless, DOD Instruction 4000.19 clarifies that a non-DOD entity may receive support from DOD. In either case, intragovernmental or interservice agreement, documentation is required.

Broad areas of recurring interservice and intragovernmental support and cooperation that do not require reimbursement should be documented with a memorandum of agreement (MOA) or memorandum of understanding (MOU). Recurring interservice and intragovernmental support that requires reimbursement shall be documented on a DD [Department of Defense] Form 1144, "Support Agreement" ... , or similar format that contains all the information required on DD Form 1144. Support that benefits a receiver without creating additional cost to the supplier (e.g., gate guards, fire protection) may be included on a DD Form 1144, but must be identified as non-reimbursable. Provision of a single item or one time service, sales of Defense Business Operations Fund (DBOF) mission products and services, and intragovernmental sales specifically

⁵⁵ Ibid., p. 3.

⁵⁶ Department of Defense Instruction Number 4000.19, *Interservice and Intragovernmental Support*, Aug. 9, 1995, p. 15, available at [<http://www.dtic.mil/whs/directives/corres/pdf2/i400019p.pdf>], visited Mar. 2, 2004.

directed or authorized by law may be accomplished on the basis of an order or requisition without preparing a support agreement.⁵⁷

Apparently, documentation is required for the support agreement between the Army and CPA. If an applicable document exists and is available to the public, it might clarify what type of agreement exists between the Army and the authority.

CPA Office of Inspector General

An Office of the Inspector General was established for CPA by Title III of the FY2004 emergency supplemental.⁵⁸ The Secretary of Defense, in consultation with the Secretary of State, appoints the Inspector General, and the Inspector General reports to the CPA Administrator.⁵⁹ The Inspector General's office will cease operations six months after the "authorities and duties" of CPA "cease to exist."⁶⁰ As of March 20, 2004, the Office of Inspector General (OIG) employed 58 persons and had obtained the services of an auditing and accounting firm.⁶¹

In addition to having the duties, responsibilities, and authorities outlined in the Inspector General Act of 1978 (5 U.S.C. Appendix),⁶² the CPA Inspector General (IG) is authorized to "conduct, supervise, and coordinate audits and investigations of the treatment, handling, and expenditure of appropriated funds by the Coalition Provisional Authority in Iraq."⁶³ This involves, for example, monitoring obligations and expenditures, reconstruction activities, contracts, and transfers of funds and associated information between and among the CPA and other departments, agencies, and entities of the federal government.⁶⁴ It seems that the CPA IG is to be treated the same as any federal agency's OIG. The CPA office is to coordinate with the DOD and USAID Offices of Inspector General.⁶⁵ Additionally, any federal department or agency that is asked to provide information or assistance to the CPA OIG is to do so.⁶⁶ In his statement on the emergency supplemental, the President apparently placed some restrictions on CPA's OIG. He noted that the Inspector General is to:

refrain from initiating, carrying out, or completing an audit or investigation, or from issuing a subpoena, which requires access to sensitive operation plans, intelligence matters, counterintelligence matters, ongoing criminal investigations

⁵⁷ Ibid., p. 4.

⁵⁸ P.L. 108-106; 117 Stat. 1209, at 1234.

⁵⁹ Sec. 3001(c) and (e) of P.L. 108-106.

⁶⁰ Sec. 3001(o) of P.L. 108-106.

⁶¹ Coalition Provisional Authority, Office of Inspector General, *Message from the Inspector General of the Coalition Provisional Authority*, p. 13.

⁶² P.L. 95-452, Sec. 1; Oct. 12, 1978; 92 Stat. 1101.

⁶³ Sec. 3001(f)(1) and (g) of P.L. 108-106.

⁶⁴ Sec. 3001(f)(1) of P.L. 108-106.

⁶⁵ Sec. 3001 (f)(4) and (5) of P.L. 108-106.

⁶⁶ Sec. 3001(h)(4) of P.L. 108-106.

by other administrative units of the Department of Defense related to national security, or other matters the disclosure of which would constitute a threat to national security. The Secretary of Defense may make exceptions to the foregoing direction in the public interest.⁶⁷

It remains to be seen whether this restriction will have any effect on the work of the CPA IG.

Procurement Activities

Appropriated Funds for the Reconstruction of Iraq. The Emergency Wartime Supplemental Appropriations Act for FY2003,⁶⁸ which was the first supplemental to provide funds for the reconstruction of Iraq, was signed on April 16, 2003, prior to the announcement that Ambassador Bremer would be the Administration's Presidential Envoy to Iraq. Accordingly, there is no mention of CPA (or ORHA) in this statute. The \$2.475 billion appropriated to the President for the reconstruction of Iraq could be apportioned only to USAID and the Departments of Defense, Health and Human Services (HHS), State, and the Treasury.⁶⁹

The FY2004 emergency supplemental, which was signed by the President on November 6, 2003, included CPA in the list of organizations to which the Iraq Relief and Reconstruction Fund can be apportioned.⁷⁰ The other five organizations in the list were the ones included in the first supplemental.

While the authority is eligible to receive funds for the reconstruction of Iraq, it remains to be seen whether it will award any contracts funded by the FY2004 emergency supplemental. Deputy Secretary Wolfowitz's December 5, 2003, memorandum identifying countries whose companies are eligible to compete for contracts funded by the FY2004 emergency supplemental also stated that the construction and services contracts funded by the supplemental "are to be awarded by the Coalition Provisional Authority (CPA) and by the Department of Defense, on behalf of CPA."⁷¹ To date, solicitations for the major design/build construction contracts have been issued by the U.S. Army Corps of Engineers, the U.S. Army Communications-Electronics Command (CECOM), and the Naval Facilities

⁶⁷ U.S. President (G.W. Bush), "Statement on Signing the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004," *Weekly Compilation of Presidential Documents*, vol. 39, Nov. 6, 2003, p. 1549.

⁶⁸ P.L. 108-11; 117 Stat. 559, at 573.

⁶⁹ "Apportion" refers to a procedure whereby the President, through OMB, distributes appropriated funds to executive agencies. (31 U.S.C. § 1513(b)(1). Outside the executive branch, "the official having administrative control of an appropriation available to the legislative branch, the judicial branch, the United States International Trade Commission, or the District of Columbia government ... shall apportion the appropriation in writing." (31 U.S.C. §1513(a).)

⁷⁰ 117 Stat.1225.

⁷¹ Paul Wolfowitz, Deputy Secretary of Defense, "Determination and Findings," Dec. 5, 2003, available at [http://www.rebuilding-iraq.net/pdf/D_F.pdf], visited Feb. 2, 2004.

Engineering Command. Proposals were to be submitted to the office that issued the solicitation. Offerors⁷² also were required to submit copies of their proposals to the Iraq Reconstruction Contracting Office, which is located in Alexandria, Virginia. The Pentagon Renovation Office issued the solicitations for support for the CPA's PMO and sector PMOs. Proposals were to be submitted to this office, but there was no requirement for proposals for the program management office (PMO) and sector program management offices (SPMOs) contracts to be submitted to the Iraq Reconstruction Contracting Office.⁷³ Solicitations were issued on January 6, 2004, and, as of March 30, 17 contracts had been awarded.⁷⁴

Apparently, no official explanation as to why the CPA did not issue these solicitations has been offered. A possible factor in the decision to decentralize the solicitation, evaluation, and award processes might have been the scheduled termination of the CPA. Knowing that the CPA would terminate operations on June 30, Administration officials might have chosen the route they did in order to maintain continuity. Apparently, the PMO will continue to function after the CPA disbands. In response to a question asked at the January 21, 2004, pre-proposal conference, CPA wrote: "This issue [of who the PMO will report to after June 30] is being studied now. Regardless of who the CPA PMO will report to after 30 June 2004, the CPA PMO will still be responsible for managing the Iraqi Infrastructure

⁷² An offeror is a business that submits a proposal in response to a government solicitation.

⁷³ The nine solicitations (communications, one contract; electrical, three contracts; public buildings, one contract; public works water, two contracts; security and justice, one contract; transportation, one contract; water resources, one contract; PMO, one contract; and SPMOs, six contracts) are available at [http://www.rebuilding-iraq.net/portal/page?_pageid=33,33678&_dad=portal&_schema=PORTAL], visited Mar. 4, 2004.

⁷⁴ The contracts were awarded to: AECOM (PMO support, \$21.6 million), CH2M Hill/Parsons (public works and water SPMO support; \$28.4 million), Berger/URS (transportation/communications SPMO support, \$8.4 million; security/justice SPMO support, \$8.4 million; buildings/education/health SPMO support, \$10.7 million), Iraq Power Alliance Joint Venture (electrical services SPMO support, \$43.3 million), Foster Wheeler (oil SPMO support, \$8.4 million), Fluor AMEC LLC (power generation facilities, \$500 million; public works and water — northern region, \$600 million; public works and water — southern region, \$500 million), Washington International Inc. and Black and Veatch (water resources, \$600 million), Washington International Inc. (electricity — northern region, \$500 million), Perini Corp. (electricity — southern region, \$500 million), Contract/AICI/OCI/Archirodon Joint Venture (transportation, \$325 million), Lucent Technologies World Services, Inc. (communications, \$75 million), and Parsons Delaware (buildings, education, and health, \$500 million; security, justice, and safety, \$900 million). (Coalition Provisional Authority, Program Management Office, "Iraq Reconstruction Contracts Awarded," press release, Mar. 10, 2004, available at [http://www.rebuilding-iraq.net/pdf/contracts/pmo_contract_release.pdf], visited Mar. 11, 2004; U.S. Dept. of Defense, "Iraqi Reconstruction Sector Contracts Awarded," news release, Mar. 11, 2004, no. 171-04; U.S. Dept. of Defense, "Iraqi Reconstruction Sector Contracts Awarded," news release, Mar. 12, 2004, no. 176-04, available at [<http://www.defenselink.mil/releases/2004>], visited Mar. 16, 2004; Coalition Provisional Authority, Program Management Office, "\$8 Billion Available for Work on Iraqi Public Infrastructure," news release, no. 04-011, Mar. 30, 2004, available at [http://www.rebuilding-iraq.net/pdf/projects/011_pmo_construction_recap_30mar04.pdf], visited Mar. 31, 2004.)

Reconstruction activities under these contracts.”⁷⁵ If the PMO and SPMOs are retained following the dissolution of CPA, alternative locations for these entities include the Department of the Army, USAID, or the Department of State. Another possible reason why CPA is limited to monitoring contracts may be that government officials ascertained that the authority does not have enough personnel, or enough personnel with sufficient experience in the types of work to be done in Iraq, to develop solicitations and evaluate proposals for seven major sectors, the PMO, and the SPMOs. The fact that CPA needs contractor support for its PMO and SPMOs tends to support the notion that it does not have enough resources to perform all of the necessary procurement tasks. A third consideration might have been the possibility of protests, particularly the possibility that a contractor would file a protest with the General Accounting Office (GAO) challenging the authority’s actions or decisions concerning the award of a contract. As discussed below, a few companies already have filed protests with GAO concerning CPA decisions. Perhaps the U.S. government wanted to avoid the possibility that additional protests targeting CPA would be filed with GAO. (As noted below, CPA’s own contracting procedures apply only to non-appropriated funds, and only allow for protests to be filed with CPA officials.)

The former Administrator of the Office of Federal Procurement Policy, in writing about contracting with the authority, offered another possible explanation of why government officials chose to have DOD components issue solicitations and award contracts for the reconstruction of Iraq:

The CPA is *not* the United States government. Accordingly, if one enters into a contractual relationship with the CPA, one is not entering into a contractual relationship with the United States. The rights and remedies available to parties contracting with the United States will not be available in a contractual relationship with the CPA. The remedies available to an aggrieved contracting party will be determined in part by the source of the money through which the contracting party is paid.⁷⁶

Government officials may have considered the question of the CPA’s organizational status and the possibility that a contract with the authority would not be a contract with the U.S. government. These considerations might have contributed to a determination that it would not be appropriate for CPA to enter into contracts funded by appropriated funds.

There is some question as to whether the authority uses appropriated funds for projects involving the reconstruction of Iraq. In a letter it submitted to GAO on the matter of the Turkcell Consortium protest (see below), the United States Army Legal Services Agency stated: “The funds CPA is using for contracts are not appropriated funds.... Even if this action [issuing licenses for mobile telecommunications] was a

⁷⁵ Coalition Provisional Authority Program Management Office, “Iraq Reconstruction Pre-Proposal Conference Briefing,” Jan. 21, 2004, p. 7, available at [http://rebuilding-iraq.net/pdf/qa_28_jan_04_consolidated_final.pdf], visited Mar. 4, 2004.

⁷⁶ Angela B. Styles, “Seller Beware: Assessing the Risks of Iraq Reconstruction Contracting,” *Federal Contracts Report*, Jan. 20, 2004, vol. 81, no. 2, p. 65. (italics in original)

procurement that involved the use of funds, CPA would use DFI [Development Fund for Iraq] funds, not U.S. appropriated funds for its CPA mission.”⁷⁷ This letter was written a few weeks before the FY2004 emergency supplemental was enacted, so possibly the Army was commenting only on conditions at the time. If so, then the Army’s assertion in the Turkcell Consortium bid protest might not apply to subsequent procurement actions.

Other evidence suggests that CPA uses appropriated funds for reconstruction activities. A news article that mentioned the activities of the CPA’s Program Review Board (see below) indicates the authority spends appropriated funds:

From minutes published by the CPA’s Program Review Board, it appears that the CPA has the power to shift monies between appropriated funds accounts and the Development Fund of Iraq (which contains funds from both Iraqi and foreign donated sources): “#352, Restore Iraqi Infrastructure, \$711M. [million] The Board considered the request from Task Force RIO [Restore Iraqi Oil] for changing the funding source from appropriated funds to the Development Fund of Iraq a previously approved request (#352, total amount approved \$962M). \$251M was already provided from the Natural Resource Risk Remediation Fund (NRRRF), an appropriated funds account. TF RIO indicated that \$711M is outstanding and required but of that amount \$466M was immediately required to complete projects under Phase I. The Board identified \$500M as remaining available from two appropriated accounts — the Iraq Reconstruction and Relief Fund (IRRF) and the NRRRF and therefore the requirement was approved to come from the appropriated funds. A new vote may be required for the remaining amount \$211M but this was deferred.

Agenda Item #398 (‘Police equipment - Of the \$90M authorized (funding source to be either appropriated or DFI), the CPA’s Ministry of Interior team needs an immediate disbursement of \$5M. This request is for the reprogramming of \$5M from appropriated or DFI (to be determined) to vested funds. The request was recommended for approval.⁷⁸

The latter passage also shows that CPA might be reprogramming funds among the various funding sources available to it (see below).

CPA Solicitations. CPA has been issuing solicitations, which means it also has been awarding contracts, for some time. A continuously updated list of solicitations is available from the CPA website.⁷⁹ In early March 2004, the list included solicitations for aerators, AK-47 assault rifles, sand bags, portable X-Ray units, battery cells, vehicles, berets, turbine parts, a police records management system, information technology products, agricultural equipment, satellite data communications, and railroad equipment, parts, and services. It is unknown what

⁷⁷ Maj. Frank A. March, Department of the Army, United States Army Legal Services Agency, “Protest of Turkcell Consortium, B-293048,” correspondence to U.S. General Accounting Office, Oct. 21, 2003, pp. 3 and 4.

⁷⁸ Christopher R. Yukins and Mohab Khattab, “Iraq Reconstruction Awards Should Not Be Immune from Review,” *Federal Contracts Report*, Nov. 18, 2003, vol. 80, no. 18, p. 512.

⁷⁹ The list is available at [<http://www.cpa-iraq.org/business>], visited Mar. 5, 2004.

funds CPA uses to purchase items and services listed in its solicitations. If CPA is using Iraqi funds, then CPA Memorandum Number 4 applies. Iraqi funds are defined in this memorandum as:

Funds under the control of the [Coalition Provisional] Authority consisting of (a) proceeds from Iraqi state-owned property that has been vested or seized in accordance with applicable law and made available to the CPA to assist the Iraqi people and assist in the reconstruction of Iraq; and (b) funds in the Development Fund for Iraq, the establishment of which is noted in Resolution 1483 (2203). As used in this Memorandum, “Iraqi Funds” do not include funds provided through the appropriations process of Coalition member governments (for example, funds provided directly to the CPA by the governments of the United States or the United Kingdom).⁸⁰

If CPA is using appropriated funds, it would seem reasonable for authority personnel to follow the *Federal Acquisition Regulation* (FAR), which governs federal agency procurement activities. A review of three CPA solicitations showed that two (sand bags and information technology) included numerous references to the FAR (sand bags and information technology products). The third solicitation, for berets, included only one reference to the FAR. Without additional, detailed information about the authority’s contracting activities, it is difficult to ascertain the source of funds and the guidance used for each procurement. The former Administrator of the Office of Federal Procurement Policy (OFPP) has stated that “no rules [are] in place for contracting by the CPA with U.S. appropriated funds.”⁸¹ In the absence of a clear statement on the organizational status of the CPA, however, this assessment may or may not be accurate.

Program Review Board. Ambassador Bremer established, through Coalition Provisional Authority Regulation Number 3, a Program Review Board (PRB), which reports directly to him. The board’s general duty is to be “responsible for recommending expenditures of resources from the Development Fund for Iraq and other resources identified” elsewhere in the regulation. In developing funding plans, the PRB recommends disbursements of appropriated funds, “Iraqi property lawfully vested in the U.S. Treasury,” funds, cash, or other financial instruments owned by Iraq or the (former) regime, and the Development Fund for Iraq. A news article asserted that the PRB “really controls only the Iraqi money.”⁸² However, as noted above, a news article indicates the PRB is involved spending appropriated funds. The board is also responsible for proposing “principles and standards for expending funds for the relief and recovery of Iraq in a fair, consistent and transparent manner, through contracts or otherwise.”⁸³

⁸⁰ Coalition Provisional Authority, “Contract and Grant Procedures Applicable to Vested and Seized Iraqi Property and the Development Fund for Iraq,” Coalition Provisional Authority Memorandum Number 4, pp. 3-4.

⁸¹ Styles, “Seller Beware: Assessing the Risks of Iraq Reconstruction Contracting,” p.65.

⁸² Jackie Spinner and Ariana Eunjung Cha, “U.S. Decisions on Iraq Spending Made in Private,” *Washington Post*, Dec. 27, 2003, p. A15.

⁸³ Coalition Provisional Authority, “Coalition Provisional Authority Regulation Number 3, (continued...) ”

The board consists of a chairman, who is appointed by the CPA Administrator; the directors of economic policy, civil affairs policy, the USAID — Iraq mission, operations, and security affairs (all of which apparently are CPA personnel); and authorized representatives of the commander of coalition forces, the Iraqi Ministry of Finance, the United Kingdom, Australia, and the chairman of the Council for International Coordination. If the PRB takes action on any matter relating to the disposition of appropriated funds, then the voting membership is also to include authorized representatives of DOD, and Departments of the Treasury and State. Additionally, the status of the authorized representatives of the Iraqi Ministry of Finance, the United Kingdom, Australia, and Council for International Coordination shifts from voting to nonvoting on the disposition of appropriated funds. Others who may attend board meetings as nonvoting members include the CPA Comptroller and General Counsel; Program Coordinator of the board; and authorized representatives of OMB, the Office of the Secretary of Defense, the International Monetary Fund, the World Bank, the United Nations Special Representative of the Secretary General for Iraq, and the International Advisory and Monitoring Board.⁸⁴

Protests. Protests challenging the authority have been filed with GAO. On October 14, 2003, GAO received a bid protest from Turkcell Consortium, which challenged the award of mobile telecommunications licenses in Iraq by CPA. This was the first protest filed that involved the authority. The protest was dismissed because it was based on speculation, not factual grounds, that errors occurred in the award process.⁸⁵ Turkcell Consortium filed a second protest on October 27, 2003, which was also dismissed by GAO because the procurement did not involve “the provision of property or services to the federal government.”⁸⁶

While CPA was the organization that awarded the contract for mobile telecommunications licenses, GAO’s second bid protest decision identified the cognizant agency as “Department of the Army, for the agency.”⁸⁷ Reportedly, the U.S. Army was also listed as the cognizant agency on GAO’s docket for the first protest, and the solicitation number was listed as “unknown.”⁸⁸ Citing a dismissal request submitted by the Army, GAO stated, in its decision on the second protest: “The Department of the Army argued that our Office lacks jurisdiction to hear this

⁸³ (...continued)

Program Review Board,” June 18, 2003, p. 7, available at [<http://www.cpa-iraq.org/regulations/REG3.pdf>], visited Jan. 31, 2004.

⁸⁴ *Ibid.*, pp. 3-4.

⁸⁵ Melanie I. Dooley, “GAO Dismisses Turkcell Protest of Iraq Telecom Licenses; Turkcell Files New Protest after Receiving Debriefing,” *Federal Contracts Report*, BNA, Inc., Oct. 28, 2004, vol. 80, no. 15, p. 405.

⁸⁶ Melanie I. Dooley, “GAO Dismisses Turkcell’s Second Protest of Iraq Telecom Licenses but Leaves Door Open,” *Federal Contracts Report*, Nov. 18, 2003, vol. 80, no. 18, p. 507.

⁸⁷ U.S. General Accounting Office, Turkcell Consortium bid protest, file B-293048.2, Nov. 12, 2003, p. 1.

⁸⁸ Melanie I. Dooley, “GAO Dismisses Turkcell Protest of Iraq Telecom Licenses; Turkcell Files New Protest after Receiving Debriefing,” *Federal Contracts Report*, Oct. 28, 2003, vol. 80, no. 15, p. 405.

protest because the CPA is not a ‘federal agency.’”⁸⁹ Due to the fact that both protests were dismissed on other grounds, there was no need for GAO to resolve the question of “whether the CPA is a federal agency for purposes of our [GAO] bid protest jurisdiction under CICA [Competition in Contracting Act of 1984].”⁹⁰ In its second decision on this case, however, GAO explained its authority to decide bid protests and described circumstances under which it could have jurisdiction to handle bid protests concerning CPA:

The authority of our Office to decide bid protests is based on the Competition in Contracting Act of 1984 (CICA) ... and encompasses “a written objection by an interested party to a solicitation or other request by a federal agency for offers for a contract for the procurement of property or services.” Our jurisdiction does not turn on whether appropriated funds are involved ... or on whether the competition requirements of CICA apply.

We note ... that even if we ultimately determine that the CPA is not a federal agency, we may well assume jurisdiction if the challenged procurement is conducted on the CPA’s behalf by an entity that is a federal agency (such as the Department of the Army).... In any event, we would also consider a request by the CPA for our Office to consider protests outside the framework of CICA.⁹¹

CPA’s award of a contract to Nour USA to equip the Iraqi armed forces and the Iraqi civil defense corps also has been the subject of protests. A solicitation was issued on November 11, 2003, and CPA (which was explicitly identified as the contracting activity in the press release) received 19 bids.⁹² In a press release dated January 31, 2004, CPA announced that it had awarded a contract for \$327 million to Nour USA.

In mid-February, it was reported that two companies, Cemex Global Inc. and Bumar Group, had filed separate protests, which were combined by GAO into one protest, challenging the awarding of this contract to Nour USA. Among their concerns were (1) the relatively low cost of the Nour USA proposal, which was \$231 million lower than the Bumar Group’s proposal; (2) the fact that Nour’s president is A. Huda Faouki, who allegedly is a friend of Ahmad Chalabi, a member of the Iraqi Governing Council; and (3) the belief that Nour USA, which apparently was established in May 2003, has no experience in performing the work necessary to fulfill the terms of the contract.⁹³ Subsequently, four additional protests were filed

⁸⁹ U.S. General Accounting Office, Turkcell Consortium bid protest, p. 2.

⁹⁰ *Ibid.*, p. 1; 31 U.S.C. §§ 3551-3556.

⁹¹ U.S. General Accounting Office, Turkcell Consortium bid protest, pp. 2-3.

⁹² Coalition Provisional Authority, Program Management Office, “U.S.-Iraqi-Polish Group Receives Security Equipment Contract,” press release, Jan. 31, 2004, available at [http://www.rebuilding-iraq.net/portal/page?_pageid=33,32254&_dad=portal&_schema=PORTAL], visited Mar. 8, 2004.

⁹³ Joe Harper, “Polish Arms Company Challenges CPA Award to U.S. Firm, Alleges Bid Evaluation Unfair,” *Federal Contracts Report*, Feb. 24, 2004, vol. 81, no. 7, p. 199; Melanie I. Dooley, “Coalition Provisional Authority to Review Nour, Other Offerors to Equip Iraq (continued...)”

with GAO. In each of the six protests, the Department of the Army was listed as the cognizant agency and the solicitation number (FY5866-04-R-0001) was included.⁹⁴ Reportedly, CPA indicated on March 3 that it would reevaluate all timely proposals and make a new source selection decision.⁹⁵ In light of the government's decision to reevaluate proposals, GAO dismissed all protests.⁹⁶ In a March 5, 2004, press release, the CPA PMO briefly described plans for rectifying the situation, which involves the Army, but not CPA:

Today the Army announced it will terminate its contract with Nour, USA, to equip the New Iraqi Army. Protests were filed subsequent to the award to Nour. Protests are part of a transparent and fair procurement process. As a result of an internal review, the Army has determined there were irregularities in this specific contract action, and took appropriate measures to assess the validity of the protests.

The Army will conduct a complete re-solicitation; schedule release of the solicitation is to be determined. The Army wants to ensure the process is transparent, fair and conduct in an expeditious manner.⁹⁷

Reportedly, control of the procurement process transferred from CPA to the Army Materiel Command.⁹⁸

No explanation was provided as to why the Army will terminate the contract when the press release that announced the award of a contract to Nour identified CPA as the contracting activity (see above). A possible question could be posed, for example, why CPA, if it was the organization that awarded the contract initially, didn't cancel the contract. While the Department of the Army provides support to CPA, particularly in the area of acquisition, it is unclear how, why, or under what circumstances, a federal agency might cancel a contract awarded by another entity and assume responsibility for subsequent procurement activities.

Neither CPA nor DOD has disclosed why the Department of the Army, and not the authority, has been listed on GAO's bid protest docket for protests involving contracting actions apparently undertaken by CPA. As for reconstruction contracts

⁹³ (...continued)

Army," *Daily Report for Executives*, Mar. 5, 2004, no. 43, p. A-24.

⁹⁴ U.S. General Accounting Office, "GAO Bid Protest Docket," available at [<http://www.gao.gov/decision/docket>], visited Mar. 8, 2004. The file numbers are B-293676.001 through B-293676.006.

⁹⁵ Dooley, "Coalition Provisional Authority to Review Nour, Other Offerors to Equip Iraq Army," p. A-24.

⁹⁶ *Ibid.*

⁹⁷ Coalition Provisional Authority, Program Management Office, "U.S. Army Terminates Contract to Equip New Iraqi Army," Mar. 5, 2004, available at [<http://www.rebuilding-iraq.net>], visited Mar. 11, 2004.

⁹⁸ Abby Bowles, "Army Materiel Command Put in Charge of Resoliciting Iraq Army Equipment Contract Awarded to Nour," *Federal Contracts Report*, Mar. 16, 2004, vol. 81, no. 10, p. 279.

funded by the FY2004 supplemental, the fact that DOD components, such as the Army Corps of Engineers and the Naval Facilities Engineering Command, are the contracting activities would seem to preclude the possibility that an offeror would file a protest with GAO challenging CPA. Considering the Department of the Army's assertion, during the protest by Turkcell Consortium, that CPA is not an agency, it suggests that there might be some (unknown) advantages to shielding CPA from protests.⁹⁹ Without further information about CPA's procurement process and organizational status, it is unclear whether any advantages exist, and, if so, what they might be.

It is unknown whether any offerors have filed protests under the provisions of Coalition Provisional Authority Memorandum Number 4, which, as noted above, provides procurement rules for what may be referred to collectively as Iraqi, or non-appropriated, funds. The paragraph on protests states:

A contractor wishing to object to the terms of a solicitation, the termination of a solicitation, the award of a contract, or the termination of the award of a contract, shall present the matter to the Contracting Officer for an initial decision. The contractor shall state to the Contracting Officer the basis for the protest. If the contractor does not agree with the Contracting Officer's initial decision, the Contractor may appeal the initial decision to the Head of Contracting Activity, CPA, for resolution. The decision of the Head of Contracting Activity, CPA, shall be the final decision in the matter.¹⁰⁰

Not only does this provision fail to provide for any sort of external, independent review or adjudication process (such as provided by GAO), it also omits any requirements or procedures for CPA personnel to respond in a timely fashion, or to provide an explanation for their decision.

Appropriated Funds for the Operating Expenses of CPA. The FY2004 supplemental (P.L. 108-106) appropriates \$933 million to the President for the authority's operating expenses. Expenses may include "personnel costs, transportation, supply, equipment, facilities, communications, logistics requirements, studies, physical security, media support, promulgation and enforcement of regulations, and other activities needed to oversee and manage the relief and reconstruction of Iraq and the transition to democracy"¹⁰¹ These funds are "to remain available until September 30, 2005: *Provided*, That the appropriation of funds under this heading shall not be construed to limit or otherwise affect the ability of the Department of Defense to furnish assistance and services, and any other support, to the Coalition Provisional Authority."¹⁰² In a memorandum dated December 5, 2003, the President transferred these funds to the Secretary of Defense:

⁹⁹ March, "Protest of Turkcell Consortium, B-293048," pp. 2- 4.

¹⁰⁰ Coalition Provisional Authority, "Contract and Grant Procedures Applicable to Vested and Seized Iraqi Property and the Development Fund for Iraq," p. B-3.

¹⁰¹ 117 Stat. 1226.

¹⁰² *Ibid.*

The funds appropriated to the President under the heading Operating Expense of the Coalition Provisional Authority in the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004 (Public Law 108-106), or in any subsequent appropriation under this heading, are transferred to the Secretary of Defense, for an account designated Operating Expenses of the Coalition Provisional Authority, International Reconstruction and Other Assistance, Army.¹⁰³

Information is not available to explain whether the CPA Administrator has access to these funds, or if he relies on the Secretary of Defense for purchasing supplies and equipment needed by CPA.

Regulatory Authority

The CPA Administrator exercises rule-making authority, which apparently is derived from the executive authority invested in CPA by the President. Unlike the heads of federal agencies, however, the Administrator apparently has not followed the Administrative Procedure Act (APA), which governs informal and formal rule making.¹⁰⁴ For example, the authority has not announced any proposed, interim, or final regulations in the *Federal Register*.

The first regulation issued by CPA outlines the Administrator's authority in issuing regulations, memoranda, orders, and public notices.¹⁰⁵

In carrying out the authority and responsibility vested in the CPA, the Administrator will, as necessary, issue Regulations and Orders. Regulations shall be those instruments that define the institutions and authorities of the CPA. Orders are binding instructions issued by the CPA. Regulations and Orders will remain in force until repealed by the Administrator or superseded by legislation issued by democratic institutions of Iraq. Regulations and Orders issued by the Administrator shall take precedence over all other laws and publications to the extent such other laws and publications are inconsistent. The Administrator may also from time to time issue Public Notices.... The Administrator may issue Memoranda in relation to the interpretation and application of any Regulation or Order.¹⁰⁶

¹⁰³ U.S. President (G. W. Bush), "Transfer of Funds Appropriated to the President under the heading Operating Expenses of the Coalition Provisional Authority, and Delegation of the Functions of the President under the heading Iraq Relief and Reconstruction Fund, in the Emergency Supplemental Appropriations Act for Defense and for the Reconstruction of Iraq and Afghanistan, 2004," *Federal Register*, Jan. 9, 2004, vol. 69, no. 6, p. 1645.

¹⁰⁴ 5 U.S.C. §§ 551-559; 60 Stat. 237. See CRS Report RS31839, *The Federal Regulatory Process: An Overview*, by Gary L. Galemore.

¹⁰⁵ A list of CPA regulations, orders, memoranda, and public notices is available at [<http://www.iraqcoalition.org/regulations/index.html>], visited Feb. 25, 2004.

¹⁰⁶ Coalition Provisional Authority, "Coalition Provisional Authority Regulation Number One," p. 2.

Enacting a regulation, order, memorandum, or public notice is accomplished by the Administrator signing off on, or approving, the document. Subjects of these documents include:

- Regulations: Development Fund for Iraq, Program Review Board, Governing Council of Iraq, Council for International Coordination, Iraq Property Claims Commission, and International Donor Assistance;
- Orders: Penal Code, Management and Use of Iraqi Public Property, Prohibited Media Activity, Regulation of Oil Distribution, Creation of a New Iraqi Army, and Status of the Coalition, Foreign Liaison Missions, Their Personnel and Contractors;
- Memoranda: Criminal Procedures, contract and Grant Procedures, Implementation of De-Baathification Order No. 1, Implementation of Weapons Control Order 3, and Appointment of Deputy Ministers;
- Public notices: Managing Financial Resources, Regarding a Responsible Iraqi Media, Regarding the Council for International Coordination, Regarding Public Incitement to Violence and Disorder.¹⁰⁷

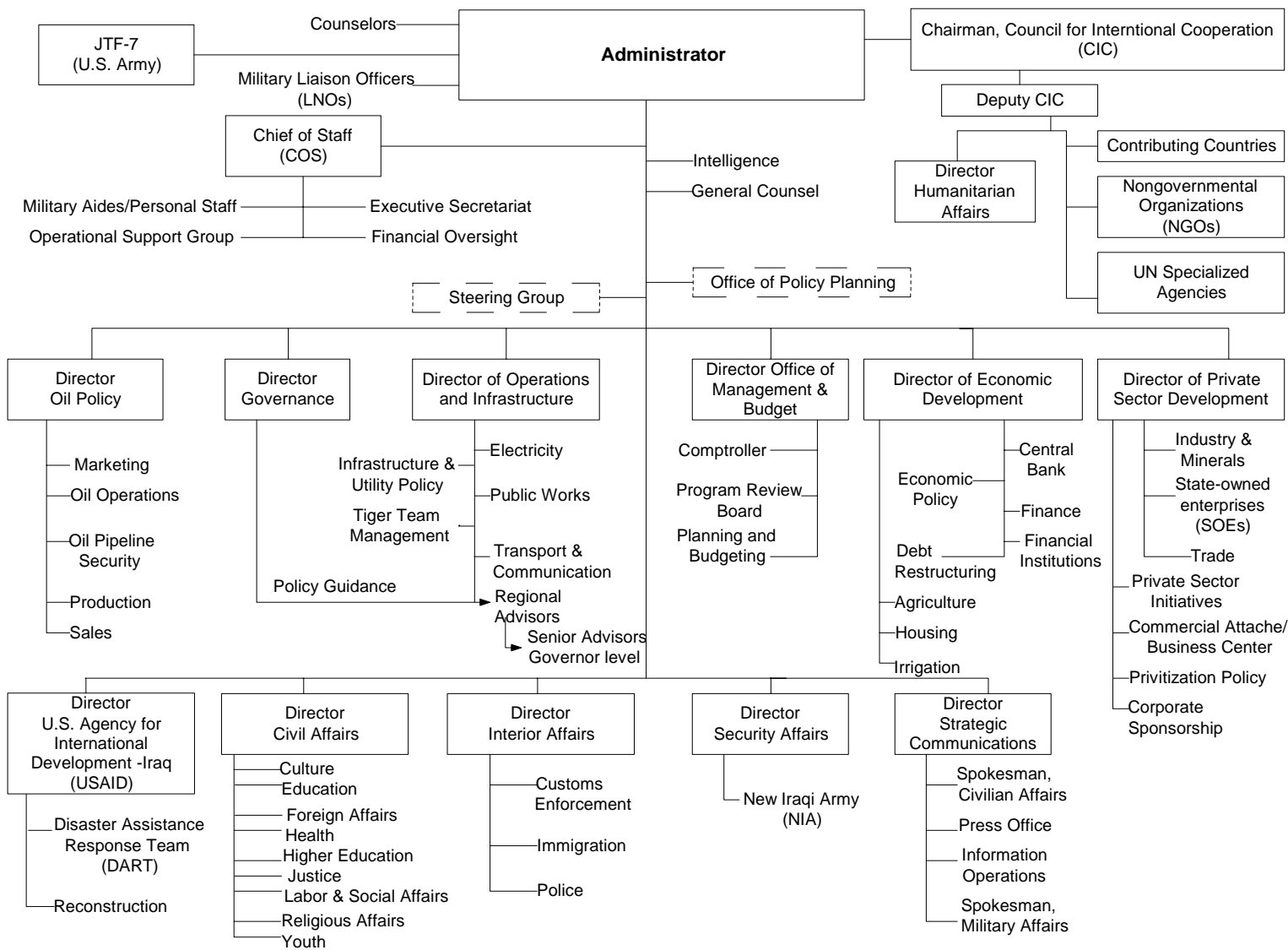
CPA Organization Chart

An undated CPA organization chart is at **Figure 1**.¹⁰⁸ While several sub-units are missing, and it is possible that the actual organization varies from this depiction, the chart provides insight into the authority's chain of command and organizational scope. Organizational subunits and positions not shown on the chart include the Deputy Administrator, Office of Inspector General, Program Management Office and Sector Program Management Offices, legislative affairs staff (which is located in the Washington, DC metropolitan area), and contracting offices (apparently, there are two contracting offices, one each in Iraq and the Washington, DC metropolitan area).

¹⁰⁷ Coalition Provisional Authority, "CPA Official Documents" website, available at [<http://www.cpa-iraq.org/regulations/index.html#Regulations>], visited Mar. 9, 2004.

¹⁰⁸ Organization chart provided electronically by CPA's legislative affairs office to the author on Feb. 24, 2004.

Figure 1. Coalition Provisional Authority



Statutory Reporting Requirements Concerning CPA and the Reconstruction of Iraq

Even prior to the inception of the CPA, Congress established reporting requirements concerning efforts to reconstruct Iraq. **Table 1** lists significant reporting requirements concerning this effort and, in particular, CPA.

Table 1. Statutory Reporting Requirements Concerning the CPA and the Reconstruction of Iraq

Statute (date of enactment)	Responsible Official or Office	Recipient(s)	Deadline(s)	Summary of Content of Report
P.L. 108-11, Sec. 1506(a) (April 16, 2003)	President	House and Senate Committees on Appropriations	Not later than 45 days after date of enactment.	<ol style="list-style-type: none"> 1. Description of duties, roles, and responsibilities of U.S. government agencies, foreign governments, and international organizations. 2. A strategy for coordinating the activities of these entities. 3. Cost estimates associated with such activities and a strategy for distributing responsibility for paying costs associated with reconstruction activities.
P.L. 108-11, Sec. 1506(b) (April 16, 2003)	President	House and Senate Committees on Appropriations	Not later than 90 days after date of enactment and every 90 days thereafter until Sept. 30, 2004.	<ol style="list-style-type: none"> 1. Separate lists of reconstruction activities that are anticipated, or were initiated or completed. 2. Cost estimates for conducting proposed activities and source of funds. 3. Updated list of financial pledges and contributions made by foreign governments or international organizations.

Statute (date of enactment)	Responsible Official or Office	Recipient(s)	Deadline(s)	Summary of Content of Report
P.L. 108-106, Sec. 2202(b) (Nov. 6, 2003)	CPA Administrator, or agency head	<ol style="list-style-type: none"> 1. House Committees on Appropriations, Government Reform, and International Relations 2. Senate Committees on Appropriations, Government Affairs, and Foreign Relations 	Not later than seven calendar days before the award of a contract under other than full and open competition procedures. [Sec. 2202(b) does not include an expiration date.]	Justification of the use of other than full and open competition procedures, a description of the scope of the contract, a description of the process the agency used in identifying and soliciting offers, the amount of the contract, and justification and approval documents.
P.L. 108-106, Sec. 2203 (Nov. 6, 2003)	CPA Administrator ,or agency head	Publish in the <i>Federal Register</i> and post on the CPA website.	Not later than seven days before the date on which a contract is entered into for contracts awarded under other than full and open competition procedures. [Sec. 2203 does not include an expiration date.]	Amount and scope of the contract, how contractors were identified and solicited, justification and approval documents.
P.L. 108-106, Sec. 2207 (Nov. 6, 2003)	Director, OMB, in consultation with CPA Administrator and the House and Senate Committees on Appropriations	House and Senate Committees on Appropriations	Not later than January 5, 2004. Updated reports are to be submitted to the committees every three months. Sec. 2207 expires on October 1, 2007.	<ol style="list-style-type: none"> 1. Proposed uses of funds for Iraq relief and reconstruction 2. Distribution of duties and responsibilities regarding reconstruction projects among U.S. government agencies 3. Funds provided by foreign governments and international organizations 4. Foreign assets seized or frozen.

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Statute (date of enactment)	Responsible Official or Office	Recipient(s)	Deadline(s)	Summary of Content of Report
P.L. 108-106, Sec. 2215(a) (Nov. 6, 2003)	CPA Administrator	<ol style="list-style-type: none"> 1. House and Senate Committees on Appropriations 2. Post on CPA's website 	Initial report due within 30 days after date of enactment. Subsequent reports due on a monthly basis until September 30, 2006.	Iraqi oil production, oil revenues, and uses of oil revenues.
P.L. 108-106, Sec. 3001(i)(1) and (4), (j) (Nov. 6, 2003)	CPA Inspector General	<ol style="list-style-type: none"> 1. Senate Committees on Appropriations, Armed Services, and Foreign Relations 2. House Committees on Appropriations, Armed Services, and International Relations 3. Post on CPA website 4. CPA Administrator 	Not later than March 30, 2004, and every calendar quarter thereafter. [Apparently, this requirement will continue until OIG expires, which will happen six months after CPA is dissolved. (Sec. 3001(o).)]	A detailed statement of all obligations, expenditures, and revenues associated with reconstruction and rehabilitation activities in Iraq (including the operating expenses of CPA and a discussion of how CPA used other than full and open competition procedures).
P.L. 108-106, Sec. 3001(i)(3) and (4), (j) (Nov. 6, 2003)	CPA Inspector General	<ol style="list-style-type: none"> 1. Senate Committees on Appropriations, Armed Services, and Foreign Relations 2. House Committees on Appropriations, Armed Services, and International Relations 3. Post on CPA website 4. CPA Administrator 	Not later than June 30, 2004, and semiannually thereafter. [Apparently, this requirement will continue until OIG expires, which will happen six months after CPA is dissolved. (Sec. 3001(o).)]	Summary of the activities of the OIG in the previous six months (for example, significant problems, abuses, and deficiencies, and OIG's recommendations for corrective action).
P.L. 108-136, Sec. 1203 (Nov. 24, 2003)	Secretary of Defense	Congress	Not later than 90 days after date of enactment.	Range of infrastructure reconstruction, civil administration, humanitarian assistance, interim

Statute (date of enactment)	Responsible Official or Office	Recipient(s)	Deadline(s)	Summary of Content of Report
				governance, and political development activities undertaken in Iraq by DOD officials and those civilians reporting to the secretary. A required element is a discussion of the evolution of the organizational structure of the civilian groups (ORHA and CPA) reporting to the Secretary.
P.L. 108-199, Sec. 599C (Nov. 25, 2003)	OPM	House and Senate Committees on Appropriations	Initial report due February 1, 2004. Subsequent reports due every quarter until May 2005.	Number of detailees, by agency, that are detailed to CPA.

Policy Issues

Discussion of CPA

While a letter exists that states that the United States, and the United Kingdom, created the authority, and there are several documents that suggest that CPA is a U.S. government entity, the status of this organization remains open to question. No explicit, unambiguous, and authoritative statement has been provided that declares how the authority was established, under what authority, and by whom. Instead, the Army maintains, for example, that the CPA is not a federal agency, but an international coalition similar to a NATO-based organization, SFOR. Other executive branch documents state, or imply, that U.N. Security Council Resolution 1483 was instrumental in creating CPA.

Perhaps this ambiguity allows the authority to perform multiple roles, each with its own chain of command, stakeholders or constituents, funding, and accountability policies and mechanisms. A statement in the FY2004 emergency supplemental — “in its [CPA] capacity as an entity of the United State government” — suggests that U.S. government entity is only one of CPA’s roles. Other roles might include temporarily aiding in the governing of Iraq and serving as part of a coalition. Possibly, the mix of arrangements allows CPA to operate with greater discretion and more authority, and have access to more resources than if it was solely a federal agency, or an arm of the United Nations.¹⁰⁹ CPA personnel also might be able to work more efficiently and effectively under this mix. By operating under more than one set of laws, regulations, and policies, CPA possibly could expand the scope and reach of the organization’s authority beyond what it would be otherwise. For

¹⁰⁹ In a briefing on contracting programs in Iraq, Lawrence Di Rita, Acting Secretary of Defense for Public Affairs, stated: “We’re in a war, we’re in a global war on terror. We have — many of the restrictions on how money is appropriated and spent are based on rules and statutes that have developed over a course of time that was not a period of war. So we’ve got a certain disconnect between the need to spend money quickly now, and we’ve got certain funds available to do that — the CERP [Commanders Emergency Response Program] is a pot of money that’s got fewer restrictions, relatively speaking, attached to it. It is certainly understandable that a military commander who just knows if he had \$10 million he can address some issues, isn’t going to necessarily be the one who’s patient enough to sort through all the peacetime restrictions on the use of funds. That’s somebody else’s job; people are doing that. These restriction are real, they were put in place for a very good reason. But they’re restrictions that bear some scrutiny now that we’re trying to address a problem that is real time; and it’s not only a real-time problem, it’s a real-time problem where people are being killed.... But I can tell you that the people who are responsible, who have that more — who have that broader view of how this money is allocated and what those restrictions are, are working through the problem in a very aggressive way — Ambassador Bremer, General Abizaid, General Sanchez.... We have a lot of restrictions on the way some money can be spent, fewer restrictions on the way other money can be spent, and we’re trying our best to kind of make those determinations all the time.” (Rear Admiral David J. Nash (ret.), Director, CPA Program Management Office, and Lawrence Di Rita, Acting Secretary Defense of Public Affairs, “Briefing on Contracting Programs,” news transcript, Mar. 10, 2004, available at [<http://www.defenselink.mil/transcripts/2004>], visited Mar. 11, 2004.)

example, the CPA Administrator drafted the regulations, orders, memoranda, and public notices that apply to Iraq; and the Program Review Board has jurisdiction over four funding sources, including appropriated funds. An advantage of having the CPA treated as part of the Department of Defense is that the chain of command runs through the executive branch, which would not occur if CPA were purely an international organization or coalition.

Billing itself as an international coalition, while eschewing the label “federal agency,” might be construed as an effort to make the organization more palatable, at least symbolically, to Iraqis and others. For example, the CPA website address ends “.com” and the PMO website ends “.net.” United States government website addresses typically end “.gov.” Furthermore, the Iraqi flag is the only flag that appears on the two websites. No flags from coalition countries are displayed.

Potential drawbacks of this arrangement are that the lines of authority and accountability could become tangled, or even obscured. CPA personnel possibly could find it difficult to understand and delineate clearly — on a daily basis — the organization’s different roles and associated funds, laws, and rules. Personnel might be hampered by this tangle of resources, laws, and documents, and could find themselves engaging in questionable, if not unethical or criminal, activities. This scenario also could prove challenging for organizations that are attempting to monitor CPA and its activities. When the authority makes a decision or expends funds, it might not be clear to external parties under what authority it is acting. Without transparency, the CPA might give the appearance of shifting funds, personnel, and tasks among different roles. Further compounding the problem, oversight initiatives might be met with the response that the activity in question was carried out under an authority over which the oversight body — Congress — has no jurisdiction.

While greater transparency possibly could help to clarify CPA’s role(s), knowing how CPA was established and under what authority would go a long way in helping to determine whether it is a federal agency, the scope of its authority, and the forms, types, and mechanisms of accountability to which it is subject. These questions will remain relevant even after CPA’s scheduled dissolution on June 30, 2004, for questions may remain about what it did, how it spent money, and what it accomplished. While information gleaned from CPA personnel would be potentially useful in the near future, it also could be useful in the long-term in informing any future efforts to provide aid to countries faced with similar problems.

Stabilization and Reconstruction Civilian Management Act of 2004 (S. 2127)

An approach that is different from the one taken by the Administration concerning Iraq may be found in S. 2127, which, as discussed below, would establish an Office of International Stabilization and Reconstruction within the Department of State. S. 2127 was introduced by Senator Richard Lugar, for himself and Senator Joseph Biden, on February 25, 2004, and was referred to the Senate Committee on

Foreign Relations.¹¹⁰ On March 18, the bill was reported, without amendment, and placed on the Senate legislative calendar. A companion bill, H.R. 3996, was introduced by Congressman Adam B. Schiff, for himself and six other Members, on March 18, 2004, and was referred to the House Committee on International Relations on the same day.

In the report that accompanied S. 2127, the committee offered some insight into the rationale for this legislation:

In the Balkans, Africa, the Caribbean, Afghanistan, and now in Iraq, the U.S. Government has cobbled together plans, people and resources in an ad hoc fashion, usually with the Defense Department in the lead. Subsequent to U.S. military operations in Iraq and Afghanistan, and cognizant of the difficulties of the ongoing transitions in those two nations, the committee recognized the need for structural change within the U.S. Government to better plan and carry out the civilian component of stabilization and reconstruction activities The committee envisions the Secretary of State leading the organizational effort in full consultation with the Administrator of the U.S. Agency for International Development, an agency whose technical skills and operational experience are invaluable both in Washington and in the field This bill recognizes that the international community can play a vital role in this effort. One important function of the new State Department office created by the bill is to develop a clear vision of the comparative advantages, the objectives and strategies, and the corresponding capabilities of all possible international contributors to stabilization and reconstruction missions. The committee recognizes the specific skills that the United Nations and its specialized agencies, as well as non-governmental organizations, and other individual nations can bring to conflict and post-conflict situations.¹¹¹

Chief among the provisions of this bill is Section 6, Office of International Stabilization and Reconstruction. Section 6 would authorize the Secretary of State to establish an Office of International Stabilization and Reconstruction within the Department of State. The head of this office (“coordinator”) would be appointed by the President and confirmed by the Senate, report to the Secretary, and have the rank and status of Ambassador-at-Large. The head of the Office of International Stabilization and Reconstruction would be responsible for, among other things, monitoring unstable situations around the world, planning for reconstruction crises, coordinating with relevant executive agencies to develop interagency contingency plans, and coordinating with appropriate components of the United Nations.¹¹² An established office possibly would yield benefits that an ad hoc arrangement would not, such as continuity of operations, an experienced staff, and institutional memory.

¹¹⁰ Sen. Richard Lugar, “S. 2127,” remarks in the Senate, *Congressional Record*, daily edition, vol. 150 (Feb. 25, 2004), pp. S1593-S1597.

¹¹¹ U.S. Congress, Senate Committee on Foreign Relations, *The Stabilization and Reconstruction Civilian Management Act of 2004*, report to accompany S. 2127, 108th Cong., 2nd sess., Mar. 18, 2004, pp. 2-3.

¹¹² *Ibid.*

The President would, moreover, have the flexibility to choose someone other than the coordinator (or his or her office) to lead reconstruction efforts.¹¹³

Other provisions would authorize the President to provide assistance to respond to a crisis, the establishment of a response readiness corps, and the creation of a curriculum on stabilization and reconstruction.¹¹⁴

It appears that this legislation, if enacted, possibly could address some of the issues that have been raised concerning CPA. Implementation of this bill arguably could promote the development and maintenance of a permanent civilian institutional capacity for preparing for, and responding to, international crises. S. 2127 is explicit in stating where the proposed office would be located and to whom the office head would report. This information could aid in clarifying the chain of command for the office and the extent of its authority.

Conclusion

The Coalition Provisional Authority represents a multinational effort to rebuild Iraq, restore stability, and aid in establishing an interim Iraqi government. While its mission statement is fairly clear, other aspects of the authority are more obscure, particularly how it was established, under what authority, and by whom (within the U.S. government). Available information about the authority found in materials produced by the Administration alternatively: (1) deny that it is a federal agency; (2) state that it is a U.S. government entity; (3) suggest that it was enacted under United Nations Security Council Resolution 1483; (4) refer to it, and OHRA, as “civilian groups ... reporting to the Secretary [of Defense]”;¹¹⁵ and (5) state that it was created by the United States and United Kingdom. Without a clear, unambiguous statement that declares the CPA’s organizational status and clarifies its relationship with DOD and other federal agencies, various questions may be left unanswered, including whether, and to what extent, CPA might be held accountable for its programs, activities, decisions, and expenditures.

¹¹³ Sec. 6 of S. 2127.

¹¹⁴ Sec. 5, 7, and 8 of S. 2127.

¹¹⁵ Sec. 1203 of P.L. 108-136.