

TSS, Inc.
Form 8-K
January 03, 2019
UNITED STATES

SECURITIES AND EXCHANGE COMMISSION

Washington, D.C. 20549

FORM 8-K

CURRENT REPORT

**Pursuant to Section 13 or 15(d) of
The Securities Exchange Act of 1934**

January 3, 2019 (December 28, 2018)

Date of Report (Date of earliest event reported)

TSS, INC.

(Exact name of registrant as specified in its charter)

Delaware (State or other jurisdiction of incorporation)	000-33627 (Commission File Number)	20-2027651 (I.R.S. Employer Identification No.)
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110 E. Old Settlers Road
Round Rock, Texas **78664**
(Address of principal executive offices) (Zip Code)

(512) 310-1000
(Registrant's telephone number, including area code)

Not Applicable

(Former name, former address, and former fiscal year, if changed since last report.)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 or Rule 12b-2 of the Securities Exchange Act of 1934.

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01. Entry into a Material Definitive Agreement.

Item 2.01 Completion of Acquisition or Disposition of Assets.

On December 28, 2018, Innovative Power Systems, Inc. (“IPSI”), a wholly owned subsidiary of TSS, Inc. (“TSS”, together with IPSI, the “Company”), entered in an asset purchase agreement (the “Purchase Agreement”) to sell certain identified assets used in IPSI’s Virginia-based, installation services of mission critical data center power and cooling and related services business, together with certain identified liabilities, to Innovative Power, LLC (the “Buyer”) for total cash consideration of \$2.5 million, subject to certain post-closing adjustments relating to working capital and certain customer contracts of the business (the “Transaction”). The Company intends to use the proceeds from the Transaction for general working capital purposes.

The managing member of the Buyer is Peter H. Woodward, Chairman of the Board of Directors of TSS. Mr. Woodward is also the General Partner of MHW Partners, LP and the managing member of MHW SPVII, LLC (collectively “MHW”), entities that hold \$1.595 million of promissory notes payable by TSS. The purchase price was determined through arms-length negotiations between TSS and Mr. Woodward. The Transaction was unanimously approved by the Board of Directors of TSS other than Mr. Woodward.

The Transaction closed on December 28, 2018. The Purchase Agreement contains representations, warranties, covenants and indemnification provisions customary for a transaction of this type. Many of the representations made by IPSI are subject to and qualified by materiality or similar concepts. Both the Buyer and IPSI have agreed to indemnify the other party for certain losses arising from breaches of the Purchase Agreement and for certain other liabilities, subject to specified limitations. TSS is a party to the Purchase Agreement for purposes of sharing IPSI’s indemnification obligations thereunder. In connection with the Transaction, both parties will provide transition services with respect to the business that the Buyer is acquiring.

The foregoing summary of the Purchase Agreement and the Transactions contemplated thereby does not purport to be complete and is subject to, and qualified in its entirety by, the full text of the Purchase Agreement filed as Exhibit 2.1 to this Form 8-K and is incorporated herein by reference.

The representations, warranties and covenants set forth in the Purchase Agreement have been made only for the purposes of the Purchase Agreement and solely for the benefit of the parties thereto. In addition, such representations, warranties and covenants (i) are subject to materiality qualifications contained in the Purchase Agreement that may differ from what may be viewed as material by investors, (ii) are made only as of the dates specified in the Purchase Agreement and (iii) have been included in the Purchase Agreement for the purposes of allocating contractual risk between the parties to the Purchase Agreement instead of establishing these matters as fact. Accordingly, the Purchase Agreement is included with this filing only to provide investors with information regarding its terms and not to provide investors with any other factual information regarding the parties or their respective businesses. Investors

should not rely on the representations, warranties and covenants or any descriptions thereof as characterizations of the actual state of facts or condition of the parties or any of their respective affiliates. Moreover, information concerning the subject matter of the representations and warranties may change after the date of the Purchase Agreement, which subsequent information may or may not be fully reflected in the Company's public disclosures.

Forward Looking Statements

Certain material presented in this report includes forward-looking statements intended to qualify for the safe harbor from liability established by the Private Securities Litigation Reform Act of 1995. These forward-looking statements include, but are not limited to, (i) all statements, other than statements of historical fact, included in this report that address activities, events or developments that the Company expects or anticipates will or may occur in the future or that depend on future events, or (ii) statements about the Company's future business plans and strategy and other statements that describe the Company's outlook, objectives, plans, intentions or goals, and any discussion of future operating or financial performance. Whenever used, words such as "may," "will," "would," "should," "potential," "strategy," "anticipates," "estimates," "expects," "project," "predict," "intends," "plans," "believes," "targets" and other terms of similar nature are intended to identify such forward-looking statements. Forward-looking statements are uncertain and to some extent unpredictable, and involve known and unknown risks, uncertainties and other important factors that could cause actual results to differ materially from those expressed or implied in, or reasonably inferred from, such forward-looking statements. Factors that could cause results to differ materially from those anticipated included, but are not limited to, the risk factors and cautionary statements included in the Company's periodic and current reports (Forms 10-K, 10-Q and 8-K) filed from time to time with the Securities and Exchange Commission. All such factors should be considered in evaluating any forward-looking statements. The Company undertakes no obligation to update any forward-looking statements in this report to reflect new information, future events or otherwise.

Item 9.01. Financial Statements and Exhibits.

(b) Pro Form Financial Information.

Included herein as Exhibit 99.1 to this Current Report on Form 8-K is the following pro forma financial information:

- Unaudited Pro Forma Consolidated Balance Sheet as of September 30, 2018, which is based on the Company's unaudited consolidated balance sheet as of September 30, 2018 and gives effect to the Transaction as if the Transaction had occurred on September 30, 2018;
- Unaudited Pro Forma Consolidated Statement of Operations for the nine months ended September 30, 2018, which has been derived from the Company's unaudited consolidated statement of operations for the nine months ended September 30, 2018 and gives effect to the Transaction as if the Transaction had occurred on January 1, 2017;
- Unaudited Pro Forma Consolidated Statement of Operations for the year ended December 31, 2017, which has been derived from the Company's audited consolidated statement of operations for the year ended December 31, 2017 and gives effect to the Transaction as if the Transaction had occurred on January 1, 2017; and
- Notes to Unaudited Pro Forma Consolidated Financial Statements

(d) Exhibits.

Asset Purchase Agreement, dated December 28, 2018, by and among Innovative Power Systems, Inc., TSS, Inc., and Innovative Power, LLC.

99.1 Unaudited Pro Forma Consolidated Financial Statements of TSS, Inc.

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

TSS, INC.

By: /s/ John Penver
John Penver
Chief Financial Officer

Date: January 3, 2019