

HERLEY INDUSTRIES INC /NEW  
Form SC TO-T/A  
March 25, 2011

**UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION**  
Washington, D.C. 20549

**SCHEDULE TO**

**Amendment No. 4**

**(Rule 14d-100)  
Tender Offer Statement under Section 14(d)(1) or 13(e)(1)  
of the Securities Exchange Act of 1934**

**Herley Industries, Inc.**

(Name of Subject Company (Issuer))

**Lanza Acquisition Co.**

**and**

**Kratos Defense & Security Solutions, Inc.**

(Name of Filing Persons (Offerors))

**Common Stock, \$0.10 par value**

(Title of Class of Securities)

**427398102**

(CUSIP Number of Class of Securities)

**Eric M. DeMarco**  
**President and Chief Executive Officer**  
**Kratos Defense & Security Solutions, Inc.**  
**4820 Eastgate Mall**

**San Diego, CA 92121**  
**(858) 812-7300**

(Name, address and telephone number of person authorized  
to receive notices and communications on behalf of filing persons)

**Copy to:**  
**Deyan Spiridonov**

**Teri O Brien**

**Paul, Hastings, Janofsky & Walker LLP**

**4747 Executive Drive, 12th floor**

**San Diego, CA 92121**

**(858) 458-3000**

#### **CALCULATION OF FILING FEE**

**Transaction Valuation\***  
**\$ 296,706,926**

**Amount of Filing Fee\*\***  
**\$ 34,447.67**

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\* Estimated for purposes of calculating the filing fee only. This calculation assumes the purchase of 15,616,154 shares of the Common Stock of Herley Industries, Inc. (representing the number of shares, including common stock outstanding and options) at the tender offer price of \$19.00 per share.

\*\* The amount of the filing fee, calculated in accordance with Rule 0-11 under the Securities Exchange Act of 1934, as amended, and Fee Rate Advisory #5 for fiscal year 2011, issued December 22, 2010, by multiplying the transaction value by .0001161.

x Check the box if any part of the fee is offset as provided by Rule 0-11(a)(2) and identify the filing with which the offsetting fee was previously paid. Identify the previous filing by registration statement number, or the Form or Schedule and the date of its filing.

Amount Previously Paid: \$34,447.67  
Form or Registration No.: Schedule TO-T

Filing Party: Kratos Defense & Security Solutions, Inc.  
Date Filed: February 25, 2011

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Check the box if the filing relates solely to preliminary communications made before the commencement of a tender offer.

Check the appropriate boxes below to designate any transactions to which the statement relates:

third-party tender offer subject to Rule 14d-1.

issuer tender offer subject to Rule 13e-4.

going-private transaction subject to Rule 13e-3.

amendment to Schedule 13D under Rule 13d-2.

Check the following box if the filing is a final amendment reporting the results of the tender offer:

If applicable, check the appropriate box(es) below to designate the appropriate rule provision(s) relied upon:

Rule 13e-4(i) (Cross-Border Issuer Tender Offer)

Rule 14d-1(d) (Cross-Border Third-Party Tender Offer)

This Amendment No. 4 (this **Amendment** ) amends and supplements the Tender Offer Statement on Schedule TO (together with any amendments and supplements thereto, the **Schedule TO** ) originally filed with the Securities and Exchange Commission on February 25, 2011, as amended by Amendment No. 1 filed on March 8, 2011, Amendment No. 2 filed on March 15, 2011 and Amendment No. 3 filed on March 17, 2011, relating to the offer by Lanza Acquisition Co., a Delaware corporation (the **Purchaser** ) and an indirect wholly-owned subsidiary of Kratos Defense & Security Solutions, Inc., a Delaware corporation ( **Kratos** ) to purchase all of the issued and outstanding shares of common stock, par value \$0.10 per share (collectively, the **Shares** and each, a **Share** ), of Herley Industries, Inc., a Delaware corporation ( **Herley** ) at a purchase price of \$19.00 per Share, net to the seller in cash, without interest, less any applicable withholding taxes (the **Offer Price** ), upon the terms and subject to the conditions set forth in the Offer to Purchase, dated February 25, 2011 (together with any amendments and supplements thereto, the **Offer to Purchase** ), and in the related Letter of Transmittal (the **Letter of Transmittal** ), copies of which are filed with the Schedule TO as Exhibits (a)(1)(A) and (a)(1)(B), respectively. Capitalized terms used and not otherwise defined in this Amendment shall have the meanings assigned to such terms in the Offer to Purchase or in the Schedule TO. This Amendment is being filed on behalf of Kratos and the Purchaser.

All the information set forth in the Offer to Purchase and Letter of Transmittal: (i) is incorporated by reference herein in response to Item 8 and Items 11 through 12 of the Schedule TO, (ii) is supplemented by the information specifically provided in this Amendment and (iii) except as otherwise set forth below, remains unchanged. Capitalized terms used and not otherwise defined in this Amendment shall have the meanings assigned to such terms in the Offer to Purchase or in the Schedule TO.

#### **Item 8 and Item 11**

Item 8 and Item 11 of the Schedule TO are hereby amended and supplemented by adding the following text:

The initial period of the Offer expired at 12:00 midnight, New York City time, on Thursday, March 24, 2011. According to Wells Fargo Bank, N.A., the depository for the Offer, as of 12:00 midnight, New York City time, March 24, 2011, 13,225,532 Shares representing approximately 93.7% of all outstanding Shares were tendered pursuant to the Offer and not withdrawn, including 302,994 Shares representing approximately 2.1% of all outstanding Shares which were tendered by notice of guaranteed delivery. The tendered Shares represent approximately 84.7% of all outstanding Shares on a fully-diluted basis. Purchaser has accepted all validly tendered Shares for payment pursuant to the terms of the Offer.

On March 25, 2011, Kratos issued a press release announcing the results of the Offer and that Purchaser has commenced a subsequent offering period for all remaining untendered Shares expiring at 12:00 midnight, New York City time, on March 29, 2011 (the end of the day on Tuesday) unless further extended. During the subsequent offering period, holders of Shares who did not previously tender their Shares into the Offer may do so and will promptly receive the same Offer Price paid during the initial offering period. The procedures for accepting the Offer and tendering Shares during the subsequent offering period are the same as those described for the Offer in the Offer to Purchase except that (i) the guaranteed delivery procedures may not be used during the subsequent offering period and (ii) Shares tendered during the subsequent offering period may not be withdrawn. The full text of the press release issued by Kratos is attached hereto as Exhibit (a)(5)(D) and is incorporated herein by reference.

#### **Item 12**

Item 12 of the Schedule TO is hereby amended and supplemented as follows:

(a)(5)(D) Press Release issued by Kratos Defense & Security Solutions, Inc. on March 25, 2011.

**SIGNATURES**

After due inquiry and to the best of my knowledge and belief, I certify that the information set forth in this statement is true, complete and correct.

**LANZA ACQUISITION CO.**

By: /s/ Deanna H. Lund  
Name: Deanna H. Lund  
Title: Executive Vice President and Chief Financial Officer  
Date: March 25, 2011

**KRATOS DEFENSE & SECURITY SOLUTIONS, INC.**

By: /s/ Deanna H. Lund  
Name: Deanna H. Lund  
Title: Executive Vice President and Chief Financial Officer  
Date: March 25, 2011

**INDEX TO EXHIBITS**

- (a)(1)(A) Offer to Purchase, dated as of February 25, 2011.\*
- (a)(1)(B) Letter of Transmittal (including Substitute Form W-9).\*
- (a)(1)(C) Notice of Guaranteed Delivery.\*
- (a)(1)(D) Letter to Brokers, Dealers, Banks, Trust Companies and other Nominees.\*
- (a)(1)(E) Letter to Clients for use by Brokers, Dealers, Banks, Trust Companies and other Nominees.\*
- (a)(1)(F) Summary Advertisement published on February 25, 2011. \*
- (a)(5)(A) Press Release issued by Kratos Defense & Security Solutions, Inc. on February 7, 2011 (incorporated by reference to Exhibit 99.2 to the Schedule TO-C filed by Kratos Defense & Security Solutions, Inc. on February 7, 2011).\*
- (a)(5)(B) Press Release issued by Kratos Defense & Security Solutions, Inc. on February 25, 2011.\*
- (a)(5)(C) Press Release issued by Kratos Defense & Security Solutions, Inc. on March 16, 2011.\*
- (a)(5)(D) Press Release issued by Kratos Defense & Security Solutions, Inc. on March 25, 2011.
- (b)(1) Commitment Letter, dated February 7, 2011, by and among Kratos Defense & Security Solutions, Inc. and Jefferies Group, Inc., Key Capital Corporation and OPY Credit Corp. (incorporated by reference to Exhibit 10.1 to the Schedule TO-C filed by Kratos Defense & Security Solutions, Inc. on February 7, 2011).\*
- (d)(1) Agreement and Plan of Merger, dated February 7, 2011, by and among Kratos Defense & Security Solutions, Inc., Lanza Acquisition, Co. and Herley Industries, Inc. (incorporated by reference to Annex A to the Prospectus Supplement dated February 7, 2011, pursuant to the Registration Statement on Form S-3 of Kratos Defense & Security Solutions, Inc. (File No. 333-161340)).\*
- (d)(2) Confidentiality Agreement, dated October 12, 2010, between Herley Industries, Inc. and Kratos Defense and Security Solutions, Inc.\*
- (d)(3) Exclusivity Agreement, dated January 19, 2011, between Herley Industries, Inc. and Kratos Defense and Security Solutions, Inc.\*
- (g) Not applicable.
- (h) Not applicable.

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\* Previously Filed