

NOVOSTE CORP /FL/
Form DEFA14A
October 13, 2005

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

Date of Report (Date of earliest event reported): October 12, 2005

Novoste Corporation

(Exact name of registrant as specified in its charter)

Florida
(State or other jurisdiction

of incorporation)

0-20727
(Commission File Number)

59-2787476
(IRS Employer

Identification No.)

4350 International Blvd.

Norcross, GA
(Address of principal executive offices)

30093
(Zip Code)

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Registrant's telephone number, including area code: (770) 717-0904

N/A

(Former name or former address, 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 (see General Instruction A.2. below):

- 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))
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Item 1.01. Entry into a Material Definitive Agreement.

On October 12, 2005, Novoste Corporation (Novoste) entered into a definitive amended and restated asset purchase agreement (the Amended and Restated Asset Agreement) with Best Vascular Inc., a privately held Delaware corporation (BVI) and Best Medical International, Inc., a privately held Virginia corporation which is an affiliate of BVI (BMI), amending and restating the asset purchase agreement previously entered into by the parties on August 25, 2005 (the Original Asset Agreement). The entry into the Original Asset Agreement was previously reported in a Current Report on Form 8-K filed with the Securities and Exchange Commission (SEC) on August 26, 2005. Consummation of the transactions contemplated by the Original Asset Agreement required that the merger agreement, dated as of May 18, 2005 (the Merger Agreement), by and among Novoste, ONIA Acquisition Corp., a newly formed wholly-owned subsidiary of Novoste, and ONI Medical Systems, Inc., be consummated. The Merger Agreement was terminated by Novoste on September 26, 2005 after Novoste's shareholders, at a reconvened special meeting of shareholders in lieu of an annual meeting on September 26, 2005, failed to approve the issuance of shares of Novoste common stock necessary to consummate the Merger Agreement.

The terms of the Amended and Restated Asset Agreement are substantially similar to those of the Original Asset Agreement, except for the following principal changes: (i) consummation of the Amended and Restated Asset Agreement is conditioned on the approval of Novoste's shareholders of the proposed asset sale transaction, (ii) conditions to closing relating to the consummation of the Merger Agreement have been removed, (iii) Novoste has agreed to pay rent on its leased facilities at 4350 International Boulevard, Norcross, Georgia through March 31, 2006, (iv) the date that the parties may terminate the Amended and Restated Asset Agreement if it has not closed has been extended from October 14, 2005 to December 31, 2005, and (v) Novoste has agreed to pay BVI \$200,000 if the shareholders of Novoste do not approve the asset sale transaction at the special meeting of shareholders to be called to consider the proposal.

Summary of the terms of the Amended and Restated Asset Agreement:

Form of transaction. Novoste will transfer and convey to BVI substantially all of the assets of Novoste's vascular brachytherapy business (Novoste's VBT Business) and BVI will assume certain specified liabilities of Novoste's VBT Business. Such assets include the patents and other intellectual property, the inventory and equipment, furniture, records, sales materials, and various agreements and contracts in each case associated with Novoste's VBT Business. The assets to be transferred and conveyed to BVI do not include cash and cash equivalents and certain other assets not related to Novoste's VBT Business. Pursuant to the Amended and Restated Asset Agreement, BMI has agreed to guarantee the full and faithful performance by BVI of all agreements of BVI set forth in the Amended and Restated Asset Agreement.

Consideration. The consideration for the sale of the assets by Novoste to BVI is the assumption by BVI of the liabilities of Novoste described below. In addition, if at the time of the closing of the Amended and Restated Asset Agreement (the Closing), Novoste has not resolved those certain patent infringement lawsuits filed against Novoste by Calmedica, LLC pending in the United States District Court for the Northern District of Georgia and the United States District Court for the Northern District of Illinois (together, the Patent Litigation), Novoste is required at Closing to make a specified cash payment to BVI and BVI will assume all liabilities arising after the Closing from the Patent Litigation. At the Closing, BVI also will assume, among others, the following liabilities of Novoste: (i) liabilities incurred or arising before or after the Closing under the supply agreement, dated October 14, 1999, between Novoste and AEA Technology-QSA, GmbH, such as penalties under the minimum purchase requirements and obligations to decontaminate and decommission equipment (excluding certain specified payments to be made by Novoste to AEA Technology-QSA, GmbH prior to the Closing), (ii) liabilities incurred or arising after the Closing under certain royalty agreements between Novoste and various third parties, (iii) liabilities arising after the Closing for utility payment obligations with respect to Novoste's leased facilities at 4350 International Boulevard, Norcross, Georgia, and (iv) liabilities arising after the Closing from the use or ownership of the assets acquired by BVI or Novoste's VBT Business. In addition, BVI will acquire the accounts receivable and assume the trade accounts payable of Novoste related to Novoste's VBT Business at the Closing, subject to a reconciliation and true-up procedure requiring either a payment by BVI to Novoste if the accounts receivable are greater than the trade accounts payable or a payment by Novoste to BVI if the accounts receivable are less than the trade accounts payable.

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The Amended and Restated Asset Agreement contains various representations, warranties and covenants of Novoste, BVI and BMI. The representations and warranties of each party set forth in the Amended and Restated Asset Agreement have been made solely for the benefit of Novoste, on the one hand, and BVI and BMI, on the other hand, and such representations and warranties should not be relied on by any other person. In addition, such

representations and warranties (i) have been qualified by disclosures made to the other party in connection with the Amended and Restated Asset Agreement, (ii) are subject to the materiality standards contained in the Amended and Restated Asset Agreement which may differ from what may be viewed as material by investors, and (iii) were made only as of the date of the Amended and Restated Asset Agreement or such other date as is specified in the Amended and Restated Asset Agreement.

Consummation of Amended and Restated Asset Agreement. Consummation of the Amended and Restated Asset Agreement is conditioned upon the approval of the shareholders of Novoste of the proposed asset sale transaction, as well as the receipt of certain specified regulatory approvals and certain other customary closing conditions.

Amendment No. 1 to Marketing Representation Agreement:

As was previously reported in a Current Report on Form 8-K filed with the SEC on August 26, 2005, Novoste, BVI and BMI entered into a marketing representation agreement, dated as of August 25, 2005, that provides that BVI will market and solicit orders for Novoste's existing inventory of products, including the Beta-Cath System, in consideration of the payment to BVI of \$25,000 on a weekly basis.

On October 12, 2005, concurrent with the amendment and restatement of the Original Asset Agreement, Novoste, BVI and BMI entered into Amendment No. 1 to Marketing Representation Agreement (the Amendment No. 1) that extended the expiration date from October 14, 2005 to December 31, 2005.

* * *

The above descriptions of the Amended and Restated Asset Agreement and the Amendment No. 1 do not purport to be complete statements of the parties' rights and obligations under those agreements and the transactions contemplated thereby. The above descriptions are qualified in their entirety by reference to the definitive agreements, copies of which are attached to this Current Report on Form 8-K as Exhibits 2.1 and 10.1, respectively, and are incorporated herein by reference.

Item 9.01. Financial Statements and Exhibits.

(c) Exhibits

- 2.1 Amended and Restated Asset Purchase Agreement, dated as of October 12, 2005, by and among Novoste Corporation, Best Vascular, Inc. and Best Medical International, Inc.
- 10.1 Amendment No. 1 to Marketing Representation Agreement, dated as of October 12, 2005, by and among Novoste Corporation, Best Vascular, Inc. and Best Medical International, Inc.
- 99.1 Press Release, dated as of October 12, 2005.

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.

NOVOSTE CORPORATION

By: /s/ Daniel G. Hall

Daniel G. Hall
Vice President, Secretary and General Counsel

Date: October 13, 2005

EXHIBIT INDEX

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